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 Los Angeles, CA 90049  
 Telephone: (310) 500-4600  
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Steven L. Hoch  
 (310) 500-4611  
 SHoch@HatchParent.com

November 19, 2007

**Via E-Mail and First Class Mail**

Kim Muratore  
 Case Developer (SFD-7-S)  
 U.S. E.P.A., Region 9  
 75 Hawthorne Street  
 San Francisco, CA 94105

Re: *Information Request Letter for the San Fernando Valley/North Hollywood  
 Superfund Site, North Hollywood, California – Documents Requested*

Dear Ms. Muratore:

As noted in our letter to you of November 12, 2007, this firm has been asked to respond to your Information Request (dated September 11, 2007) regarding the San Fernando Valley Area 1, North Hollywood Operable Unit (herein "NHOU") on behalf JAC-NUP Corporation ("JAC-NUP"). In our November 12, 2007 letter, we indicated that certain documents were being obtained and forwarded to you. To the extent they are available, we submit the following as part of our response.

**Information Request No. 1:**

Provide a copy of the articles of incorporation, partnership agreement, articles of organization, or any other documentation (together with any amendments) demonstrating the particular business structure under which the Company has existed or operated since its inception.

**Documents re: Response to Information Request No. 1:**

JAC-NUP has not been able to locate a copy of said documents. As previously noted in JAC-NUP's November 12, 2007 response, documents may have been destroyed in a fire which took place in the late 1960's or early 1970's.

**Information Request No. 2:**

For any period of time in which the Company, under any of its current or former business structures, owned the Facility, provide the name, address, and phone number of any tenant or lessees. Provide a copy of each lease, rental agreement, or any other document that establishes

the Company's relationship to any other operators at the Facility.

**Documents re: Response to Information Request No. 2:**

JAC-NUP has been able to locate the following leases described below and attached hereto:

1. **Attachment A**

Lease: March 18, 1970 between J. Allen Carmien and NUPLA CORPORATION.

2. **Attachment B**

Lease Amendment: January 1, 1997 between J. Allen Carmien and NUPLA CORPORATION.

3. **Attachment C**

Lease: November 11, 2002 between Carmein Family 1991 Trust and Nupla Acquisition Corporation.

4. **Attachment D**

Option to Extend: November 11, 2002 between Carmein Family 1991 Trust and Nupla Acquisition Corporation.

5. **Attachment E**

Addendum: November 11, 2002 between Carmein Family 1991 Trust and Nupla Acquisition Corporation.

6. **Attachment F**

Addendum: December 9, 2002 between Carmein Family 1991 Trust and Nupla Acquisition Corporation.

7. **Attachment G**

Agreement for Extension of Lease: May 27, 2005 between NUPLA CORPORATION and Wells Fargo Bank, N.A. in its fiduciary capacity as Co-Trustee of the Carmein 1991 Trust and Phyllis S. Carmien in her fiduciary capacity as Co-Trustee of the Carmein 1991 Trust.



**Information Request No. 3:**

Information provided to EPA indicates that business using the name of Nupla Corporation have been operating at the Facility since approximately 1940, but that in or about 2003 the Company sold the business to another company then known as Nupla Acquisitions Corporation. California corporate records show that this corporation changed its name to Nupla Corporation in July 2003 and continued to operate at the Facility under this name. Please provide a description of this 2003 transaction and provide copies of all documents which evidence this transaction, including but not limited to, asset purchase agreements, stock purchase agreements, and merger agreements. In addition, please provide copies of any agreement executed in connection with this transaction which deals with the retention or transfer and assumption of environmental liabilities associated with the Company's operations at the Facility.

**Documents re: Response to Information Request No. 3:**

JAC-NUP has been able to locate the following documents described below and attached hereto:

**1. Attachment H**

Asset Purchase Agreement By and Among NUPLA ACQUISITION CORPORATION and the CARMEIN FAMILY 1991 TRUST dated November 12, 2002.

**2. Attachment I**

Asset Purchase Agreement By and Among NUPLA ACQUISITION CORPORATION and NUPLA CORPORATION and the CARMEIN FAMILY 1991 TRUST dated November 12, 2002..

Please note that the exhibits to Attachment H and I are extensive and they are not included in this submission. If they are required, please advise.

Very truly yours,

  
Steven L. Hoch  
For HATCH & PARENT  
A Law Corporation

SLH:ibc

cc: Elizabeth Cox (via First Class mail)  
Rachel Loftin (via First Class mail)  
Michael Massey (via First Class mail)

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1 Lessor can and does deliver possession.

2         6. Lessor shall place Lessee in the peaceful and undis-  
3 turbed possession of the demised premises on or before the commence-  
4 ment of the term hereof, and Lessee performing and observing all of  
5 the conditions and covenants on its part to be performed Lessor shall  
6 secure to the Lessee the quiet and peaceful possession of the de-  
7 mised premises during the term hereof against all persons claiming  
8 the same.

9         7. Lessee shall not commit, or suffer to be committed,  
10 any waste upon said premises, or any nuisance.

11         8. All signs installed on premises by Lessee shall have  
12 first been approved by Lessor, but shall remain the sole and exclu-  
13 sive property of Lessee.

14         9. Lessee shall maintain the demised premises including  
15 exterior walls, roof and all other structural portions of the build-  
16 ings, in the same condition as when received, ordinary wear and tear  
17 in the usual and ordinary operation of Lessee's business, excepted.  
18 By entry hereunder, Lessee accepts the premises as being in good and  
19 sanitary order, condition and repair and agrees on the last day of  
20 said term, or sooner termination of this lease, to surrender unto  
21 Lessor said premises with said appurtenances in the same condition  
22 as when received, damage by fire, act of God or by the elements ex-  
23 cepted, and to remove all of Lessee's signs and all personal property  
24 and installations of Lessee of every kind and description not af-  
25 fixed to, from said premises.

26         10. All items of personal property and installations of  
27 Lessee affixed to the premises shall remain the property of Lessee  
28 and may be removed by it at expiration of the terms of this lease  
29 unless Lessor wishes to purchase same, and if he wishes so to do  
30 Lessor may purchase same at Lessee's then fair market value.

31         11. Lessee shall be allowed to construct such improvements  
32 upon the premises as meet all existing code requirements and, as are

1 necessary or convenient to the conduct of Lessee's business thereon;  
2 provided, however, at the expiration or sooner termination of this  
3 Lease, Lessee shall, if requested by Lessor, remove the same and  
4 restore the premises as near as practicable to its original con-  
5 dition.

6 12. In the event of a partial destruction of said premises  
7 or any building during the said term from any cause, the Lessor shall  
8 forthwith repair the same provided such repairs can be made within  
9 60 days, but such partial destruction shall in no wise annul or void  
10 this lease, except that Lessee shall be entitled to a proportionate  
11 deduction of rent while such repairs are being made, such proportion-  
12 ate deduction to be based upon the extent to which the making of  
13 such repairs shall interfere with the business carried on by Lessee  
14 in the said premises. If such repairs cannot be made within 60 days  
15 this lease may be terminated at the option of either party.

16 13. Lessee shall take out, pay for, employer's liability  
17 and workman compensation insurance in such amounts and to such lim-  
18 its as requested by Lessor and shall have Lessor named as a co-in-  
19 sured thereon.

20 14. Lessee shall have no claim against Lessor for damages  
21 should the possession or use of the Premises, as such use shall be  
22 required by the business activity of Lessee, be prevented by reason  
23 of the passage or adoption of any statute, ordinance, governmental  
24 rule, regulation, final order or judgment of any court which has the  
25 effect of prohibiting the operation of Lessee's business upon the  
26 premises, but in such event Lessee may, at its option, and upon  
27 thirty days' written notice to Lessor given at any time subsequent  
28 thereto, terminate this Lease, and Lessee thereafter shall be re-  
29 lieved of all of its obligations hereunder.

30 15. It is understood and agreed that Lessor shall not be  
31 liable to Lessee or to any person, firm, corporation or entity what-  
32 soever for any damage to property or for any injury to or death of

1 any person, arising out of or in any way connected with the actual  
2 possession, maintenance, condition or operation of the premises or  
3 any improvements, equipment or fixtures or other property located  
4 thereon by, on behalf of, or with the permission of Lessee, and  
5 Lessee hereby agrees to indemnify and save and hold Lessor harmless  
6 from any and all liability to or claims of any person, firm, corpor-  
7 ation or entity whatsoever which may be asserted against Lessor and  
8 arises or is alleged to have arisen by reason of any such damage,  
9 injury or death, provided that the foregoing shall not be construed  
10 to relieve Lessor from liability for damage, injury or death if the  
11 same shall have been caused by any act or omission of Lessor, its  
12 agents or employees.

13 16. If any one or more of the following events shall occur:

14 A. If Lessee shall default in the payment of rental  
15 or any other sums required to be paid by Lessee pursuant to the pro-  
16 visions of this Lease when the same shall become due, and such de-  
17 fault shall continue for a period of ten days following written  
18 notice given after the due date of such payment by Lessor to Lessee  
19 and specifying such default, or

20 B. If Lessee shall default in the performance of any  
21 other duty of Lessee pursuant to this Lease (other than the payment  
22 of rental or any other sums required hereunder to be paid by Lessee)  
23 and such default shall continue for a period of sixty days following  
24 written notice given after such default by Lessor to Lessee and  
25 specifying such default (unless within said sixty day period, Lessee  
26 shall commence steps for the curing of such default and shall there-  
27 after continue to use reasonable diligence in the curing thereof),  
28 or

29 C. If Lessee shall be adjudicated a bankrupt, or if  
30 a petition by or against Lessee for reorganization or adjustment or  
31 arrangement under any state or federal bankruptcy statutes shall be  
32 approved, or if Lessee shall make a general assignment of its prop-

erty for the benefit of its creditors, then in any or all of such events a default on the part of Lessee shall be deemed to exist under this Lease and Lessor shall have any one or more of the following remedies, at Lessor's election:

a. Without barring later election of any other remedy, Lessor, without taking possession of the premises, may require strict performance of all of the covenants and obligations hereof as the same shall accrue and shall have right of action therefor;

b. Without barring later election of any other remedy, Lessor may take possession of the premises through suit or otherwise, for the purpose of re-letting them for the account of Lessee, and in that event, may re-let the premises, or any part thereof, at such rental and upon such terms and conditions as may at the time and under the circumstances be reasonable, for any term not exceeding the then unexpired term of this Lease. In such event, the Lessee shall be liable for all reasonable expenses incurred by Lessor in or about such re-letting, including reasonable agents' or brokers' commissions. Lessee shall be entitled to credit for the net amount of rental so received after deducting such expenses and any other items properly chargeable against Lessee under the terms hereof, and shall pay Lessor such sums as may be required from time to time to make up the rental provided for in this Lease, and Lessee shall likewise continue liable for the performance and observance of all other covenants and conditions hereof;

c. Lessor may, by written notice to Lessee, elect to treat this Lease as terminated and cancelled, and thereupon Lessor may take possession of the premises through suit or otherwise, for the account, use and benefit of Lessor and to the exclusion of Lessee, in which event Lessee shall no longer have any obligations under this Lease.

17. A waiver by Lessor of any default by Lessee in the



1 performance of any of the covenants, terms or conditions hereof  
2 shall not constitute or be deemed a waiver of any subsequent or  
3 other default. The rights and remedies of Lessor under this Lease  
4 shall be cumulative and in addition to any other rights given to  
5 Lessor by law.

6 18. If during the term of this Lease the whole or any part  
7 of the premises shall be taken or condemned or conveyed as a result  
8 of the exercise of the power of eminent domain, then

9 a. Lessor and Lessee, respectively, shall be entitled  
10 to such award and/or compensation, or portion thereof, from the ac-  
11 quiring agency or governmental body or authority, as may at the time  
12 be provided for by applicable laws or regulations as being applicable  
13 and payable to a landlord, in the case of Lessor, and to a tenant,  
14 in the case of Lessee.

15 b. A just proportion of the rental required to be paid  
16 by Lessee hereunder shall be abated from and after the time of such  
17 taking and/or condemnation and for the remaining balance of the term  
18 of this Lease, according to the nature and extent of such taking  
19 and/or condemnation, and/or the injuries sustained by buildings,  
20 structures and/or other improvements on the premises; and

21 c. If the whole or substantially the whole of the  
22 premises shall be so taken and/or condemned, then this Lease and all  
23 rights and duties of Lessee and Lessor hereunder, shall cease and  
24 terminate as of the time of such taking and/or condemnation. If  
25 such taking and/or condemnation is partial, and the portion of the  
26 premises remaining is not reasonably suitable for Lessee's use and  
27 occupancy hereunder for the general purposes and scope of Lessee's  
28 activities for which the premises are being used by Lessee during  
29 the twelve months' period immediately preceding the date of such  
30 taking and/or condemnation (by reason of reduced size or inaccessi-  
31 bility), then this lease may be terminated at the election of Lessee  
32 within thirty days following the date of such taking and/or condem-

1 nation. Upon any termination of this Lease by reason of the fore-  
2 going provisions, such percentage of the advanced rent paid by Les-  
3 see for the month during which such termination shall occur as is  
4 equal to the percentage of said month as is represented by the num-  
5 ber of days remaining in said month following such termination shall  
6 immediately upon such termination be repaid to Lessee by Lessor.

7 19. Lessee agrees to pay direct to the taxing authorities  
8 of the city, county, or state in which the Leased Land is located all  
9 real property taxes, special taxes, or assessments, including street  
10 improvement liens, if any, and all property taxes on personal prop-  
11 erty located on the Leased Land, levied or assessed upon or against  
12 the Leased Land during the Lease Term or any extension.

13 a. For any fraction of a tax year at the beginning or  
14 end of the term, or any extension, Lessee's obligation shall be pro-  
15 rated as of the commencement or end of the Lease Term, or any exten-  
16 sion. For any such fraction of a tax year at the beginning of said  
17 term, Lessee agrees to reimburse Lessor for its portion of such taxes  
18 within sixty days after presentation to Lessee of receipted copies  
19 of the bills covering the same. For any such fraction of a tax year  
20 at the end of the Lease Term, or any extension, Lessor agrees to re-  
21 imburse Lessee for Lessor's portion of such taxes within sixty days  
22 after presentation to Lessor of receipted copies of the tax bills.

23 b. In the event any special tax or assessment is lev-  
24 ied or assessed on the Leased Land which becomes due and payable dur-  
25 ing, and the delinquency date for which falls within, the Lease Term,  
26 or any extension, which tax or assessment may be legally paid in in-  
27 stallments (whether by subjecting the demised property to bond or  
28 otherwise), Lessee shall have the option to pay such tax or assess-  
29 ment in installments. In the event of such election, Lessee shall  
30 be liable only for those installments of such tax or assessment which  
31 become due and payable during, and the delinquency date for which  
32 falls within the Lease Term, or any extension. Lessor agrees to

1 execute or join with Lessee in the execution of any application or  
2 other instrument that may be necessary to permit the payment of such  
3 special tax or assessment in installments.

4 c. Lessee shall not be required to pay any franchise,  
5 estate, inheritance, succession, capital levy, or transfer tax of  
6 Lessor, or any income, excess profits, or revenue tax, or any other  
7 tax, assessment, charge, or levy upon the rent payments, charges,  
8 and levies shall be payable by Lessor. Lessor shall not, without  
9 consent of Lessee, do any act which will cause the taxes and assess-  
10 ments on the Leased Premises to be increased.

11 20. Recordation of this Lease or of any instrument refer-  
12 ring thereto shall, at the option of Lessor, immediately work a for-  
13 feiture of this Lease.

14 21. Lessee agrees to pay all charges for gas, electricity  
15 and water used by Lessee during the term of this Lease in the con-  
16 duct of its business on the premises, including connection fees.

17 22. Lessee agrees to, and shall at its own cost and ex-  
18 pense, procure and maintain during the entire lease term (and any  
19 extensions thereof)

20 A. Comprehensive public liability insurance covering  
21 the leased premises, including the parking area and their surrounding  
22 areas, with limits of not less than \$300,000 for injury to any one  
23 person, \$500,000 for injury to two or more persons arising out of  
24 the same accident, and \$50,000 for property damage, and

25 B. Fire and extended coverage insurance in an amount  
26 not less than ninety percent of the value of the leased buildings  
27 and other improvements on the leased premises, provided that insur-  
28 ance in that percentage can be obtained, and, if not, then to the  
29 highest percentage that can be obtained.

30 C. Fire and extended coverage insurance upon Lessee's  
31 fixtures, goods, wares, and merchandise, in or upon the leased prem-  
32 ises.

1 All such Insurance shall:

2 a. Be procured from an insurer authorized to do  
3 business in California and either approved in writing by Lessor or  
4 rated "triple A" or better in Best's Insurance Reports;

5 b. Provide primary and not excess coverage;

6 c. Name Lessor as an additional insured;

7 d. Waive subrogation rights, if any, which the  
8 insurer may have against Lessor by reason of any claim, liability,  
9 loss, or expense as described in this section; and

10 e. Require that Lessor be given at least 30 days'  
11 written notice before any such insurance can be canceled or changed  
12 with respect to parties, coverage, or limits of liability. Lessee  
13 shall, prior to commencement of the lease term, deliver to Lessor a  
14 copy of such policy or policies, or a certificate of insurance in  
15 the case of blanket coverage, together with satisfactory evidence  
16 that the premiums have been paid.

17 f. Proceeds from any such policies shall be pay-  
18 able to both the Lessor and Lessee as their respective interests may  
19 appear.

20 23. At the end of five years after the commencement of  
21 this Lease the rental of Five Thousand Seven Hundred Twenty Dollars  
22 (\$5,720.00) per month shall be increased in direct proportion to any  
23 increase in the assessed valuation of the real property and build-  
24 ings leased hereunder from the commencement of this Lease. For  
25 example, if the assessed valuation of the entire Leased Premises in-  
26 cluding real property is One Hundred Thousand Dollars (\$100,000)  
27 upon commencement of this Lease, then if such assessed valuation is  
28 raised to Two Hundred Thousand Dollars (\$200,000) at any time during  
29 the first five years, then commencing with the first monthly rental  
30 payment due in the second five years of this Lease, such monthly  
31 rental shall be raised to Eleven Thousand Four Hundred Forty Dollars  
32 (\$11,440). The increase of monthly rent based upon an increase of

1 assessed valuation shall be made in each succeeding five year per-  
2 iods of the Lease and such increases shall always occur on the first  
3 month's rent of the sixth, eleventh and sixteenth years of this  
4 Lease.

5 24. Lessee shall, at its sole cost, comply with all of  
6 the requirements of all Municipal, State and Federal authorities  
7 now in force, or which may hereafter be in force, pertaining to its  
8 use of said premises, and shall faithfully observe in said use, all  
9 Municipal ordinances and State and Federal statutes now in force or  
10 which may hereafter be in force.

11 25. Lessee shall not assign or sub-let this Lease, or any  
12 interest therein, without the prior written consent of Lessor. Such  
13 consent shall not be unreasonably withheld.

14 26. In the event of the bringing of any action by either  
15 party hereto as against the other hereon or hereunder, or by reason  
16 of the breach of any covenant or condition on the part of the other  
17 party or arising out of this Lease, then the party in whose favor  
18 final judgment shall be entered shall be entitled to have and re-  
19 cover of and from the other reasonable attorney's fees to be fixed  
20 by the court wherein such judgment shall be entered.

21 27. Any holding over after the expiration of the said term  
22 with the consent of Lessor, shall be construed to be a tenancy from  
23 month to month, and shall otherwise be on the terms and conditions  
24 herein specified, so far as applicable.

25 28. The covenants and conditions herein contained shall  
26 subject to the provisions as to assignment, apply to and bind the  
27 heirs, successors, executors, administrators and assigns of all of  
28 the parties hereto.

29 29. Lessee shall keep the premises free and clear of mech-  
30 anic's, materialman's and other liens and all charges, claims and  
31 encumbrances, loss, costs or damage caused or contributed to.

32 30. All rents or other sums, notices, demands, or requests

1 from one party to another may be personally delivered or sent by  
2 mail, certified or registered, postage prepaid, to the addresses  
3 stated in this section, and shall be deemed to have been given at  
4 the time of personal delivery or at the time of mailing.

5 a. All rent or other sums payable by Lessee to Lessor  
6 shall be in lawful money or by check payable to Lessor, delivered in  
7 person or mailed to Lessor.

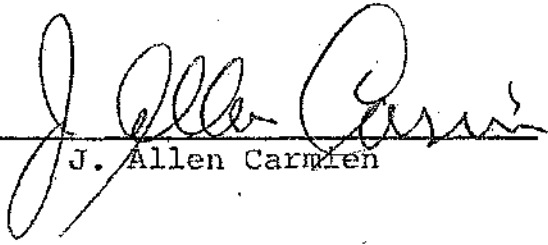
8 b. All notices, demands, requests from Lessee to Les-  
9 sor shall be given to Lessor at 525 North Maple Drive, Beverly Hills,  
10 California 90210.

11 c. All notices, demands, or requests from Lessor to  
12 Lessee shall be given to Lessee at 11912 Sheldon Street, Sun Valley,  
13 California.

14 d. Each party shall have the right, from time to time  
15 to designate a different address by notice given in conformity with  
16 this section.


17 IN WITNESS WHEREOF, Lessor and Lessee have executed this  
18 Lease, the day and year first above written.

19  
20 Lessor

21   
22 \_\_\_\_\_  
23 J. Allen Carmien

24 NUPLA CORPORATION  
25 Lessee

26  
27 By

  
28 Its TREASURER

1 Lot 1 of Tract 22682, in the city and county of  
2 Los Angeles, as per map recorded in Book 710 Pages  
3 67 and 68 of Maps, in the office of the Recorder  
4 of said County, and the southeast 23 feet of  
5 Sheldon Street as dedicated on the map of said  
6 Tract 22682, with appurtenances and improvements  
7 thereon.  
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FIRST AMENDMENT  
TO  
STANDARD INDUSTRIAL/COMMERCIAL  
SINGLE-TENANT LEASE - NET  
(1997 AMERICAN INDUSTRIAL REAL ESTATE ASSOCIATION)

Lessee: NUPLA CORPORATION, A Delaware Corporation

Lessor: J. ALLEN CARMEN


Premises: 11912 Sheldon Street, Sun Valley, CA 91352


Date of Lease: January 1, 1997

This First Amendment ("First Amendment") is executed on the date and year hereinafter set forth, by and between Lessee and Lessor with respect to the Lease referred to above (the "Lease"). The paragraphs of the Lease which are referred to below, and any other inconsistent provisions of the Lease, are superseded to the extent of the terms and conditions set forth in this First Amendment.

Lessor and Lessee agree to amend and modify the Lease as follows:

1. Improvements by Landlord. Lessor has agreed to construct and has constructed substantial additional improvements ("Additional Improvements") to the Premises for the benefit of Lessee.
2. Extension of Current Term. In consideration of the Additional Improvements, the current Lease Term which expires on December 31, 2001 is extended to May 31, 2004.

  
Initial

  
Initial

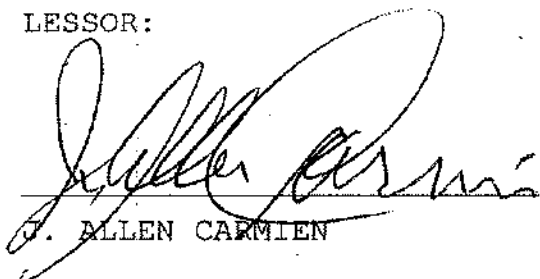


3. Base Rent Increase. In consideration of the Additional Improvements and extension of the Lease Term, Lessee agree to pay Base Rent of Twenty Four Thousand Four Hundred Fifty Dollars (\$24,450.00) commencing on June 1, 1999, and continuing each month thereafter until the end of the extended lease term.
4. Validity of Lease. Except as amended by this First Amendment, the Lease shall remain in full force and effect.

THIS FIRST AMENDMENT TO LEASE IS EXECUTED ON THE DATE HEREINAFTER SET FORTH.

Dated: June 1, 1999.

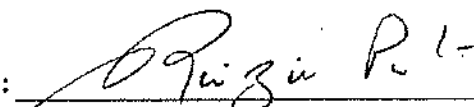
LESSOR:

  
J. ALLEN CARMEN

24,450<sup>-</sup>  
12  
\$293,400<sup>-</sup>/ANNUUM

LESSEE:

NUPLA CORPORATION,  
A Delaware Corporation

by:   
Rienzie Pintoe,  
Senior Vice-President & CFO

c:\carmien\nupla\corporate\lease-1st.amendment

**STANDARD INDUSTRIAL/COMMERCIAL SINGLE-TENANT LEASE – NET**  
**(DO NOT USE THIS FORM FOR MULTI-TENANT BUILDINGS)****Basic Provisions ("Basic Provisions").**

1.1 **Parties.** This Lease ("Lease"), dated for reference purposes only November 11, 2002, is made by and between Carmien Family 1991 Trust ("Lessor") and Nupla Acquisition Corporation, a California corporation ("Lessee"), collectively the "Parties," or individually a "Party".

1.2 **Premises.** That certain real property, including all improvements therein or to be provided by Lessor under the terms of this lease, commonly known as 11912 Sheldon St., Sun Valley, CA 91352, located in the County of Los Angeles, State of California, and generally described as (describe briefly the nature of the property and, if applicable, the "Project", if the property is located within a Project) Lot 1 of Tract 22682 in the City and County of Los Angeles (as per Exhibit A) ("Premises"). (See also Paragraph 2)

1.3 **Term:**                      years and                      months ("Original Term") commencing (See Addendum) ("Commencement Date") and ending May 31, 2005 ("Expiration Date"). (See also Paragraph 3)

1.4 **Early Possession:** N/A ("Early Possession Date"). (See also Paragraphs 3.2 and 3.3)

1.5 **Base Rent:** \$ 24,450.00 per month ("Base Rent"), payable on the First (1st) day of each month commencing (See Addendum). (See also Paragraph 4)

☐ If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted.

**1.6 Base Rent and Other Monies Paid Upon Execution:**

(a) **Base Rent:** \$ 24,450.00 for the period                     

(b) **Security Deposit:** \$ 24,450.00 ("Security Deposit"). (See also Paragraph 5)

(c) **Association Fees:** \$                      for the period                     

(d) **Other:** \$                      for                     

(e) **Total Due Upon Execution of this Lease:** \$ 48,900.00

**1.7 Agreed Use:**

Office, Warehouse and Manufacturing

(See also Paragraph 6)

1.8 **Insuring Party.** Lessor is the "Insuring Party" unless otherwise stated herein. (See also Paragraph 8)

**1.9 Real Estate Brokers:** (See also Paragraph 15)

(a) **Representation.** The following real estate brokers (the "Brokers") and brokerage relationships exist in this transaction (check applicable boxes):

☐ N/A represents Lessor exclusively ("Lessor's Broker");

☐ N/A represents Lessee exclusively ("Lessee's Broker"); or

☐ N/A represents both Lessor and Lessee ("Dual Agency").

(b) **Payment to Brokers.** Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Broker the fee agreed to in their separate written agreement (or if there is no such agreement, the sum of N/A or                      % of the total Base Rent) for the brokerage services rendered by the Brokers.

1.10 **Guarantor.** The obligations of the Lessee under this Lease are to be guaranteed by None

("Guarantor"). (See also Paragraph 37)

1.11 **Attachments.** Attached hereto are the following, all of which constitute a part of this Lease:

☒ an Addendum consisting of Paragraphs 51 through 57;

☐ a plot plan depicting the Premises;

☐ a current set of the Rules and Regulations;

☐ a Work Letter;

☒ other (specify): Addendum (Wells Fargo Bank, N.A.)

**2. Premises.**

2.1 **Letting.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. Unless otherwise provided herein, any statement of size set forth in this Lease, or that may have been used in calculating Rent, is an approximation which the Parties agree is reasonable and any payments based thereon are not subject to revision whether or not the actual size is more or less. **Note: Lessee is advised to verify the actual size prior to executing this Lease.**

2.2 **Condition.** Lessor shall deliver the Premises to Lessee broom clean and free of debris on the Commencement Date or the Early Possession Date, whichever first occurs ("Start Date"), and, so long as the required service contracts described in Paragraph

7.1(b) below are obtained by Lessee and defect within thirty days following the Start Date, warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ("HVAC"), loading doors, sump pumps, if any, and all other such elements in the Premises, other than those constructed by Lessee, shall be in good operating condition on said date and that the structural elements of the roof, bearing walls and foundation of any buildings on the Premises (the "Building") shall be free of material defects. If a non-compliance with said warranty exists as of the Start Date, or if one of such systems or elements should malfunction or fail within the appropriate warranty period, Lessor shall, as Lessor's sole obligation with respect to such matter, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, malfunction or failure, rectify same at Lessor's expense. The warranty periods shall be as follows: (i) 6 months as to the HVAC systems, and (ii) 30 days as to the remaining systems and other elements of the Building. If Lessee does not give Lessor the required notice within the appropriate warranty period, correction of any such non-compliance, malfunction or failure shall be the obligation of Lessee at Lessee's sole cost and expense.

2.3 **Compliance.** Lessor warrants that the improvements on the Premises comply with the building codes, applicable laws, covenants or restrictions of record, regulations, and ordinances ("Applicable Requirements") that were in effect at the time that each improvement, or portion thereof, was constructed. Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 50), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. ~~NOTE: Lessee is responsible for determining whether or not the Applicable Requirements, and especially the zoning, are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed.~~ If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same at Lessor's expense. If Lessee does not give Lessor written notice of a non-compliance with this warranty within 6 months following the Start Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Premises and/or Building, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Unit, Premises and/or Building ("Capital Expenditure"), Lessor and Lessee shall allocate the cost of such work as follows:

(a) Subject to Paragraph 2.3(c) below, if such Capital Expenditures are required as a result of the specific and unique use of the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof, provided, however that if such Capital Expenditure is required during the last 2 years of this Lease and the cost thereof exceeds 6 months' Base Rent, Lessee may instead terminate this Lease unless Lessor notifies Lessee, in writing, within 10 days after receipt of Lessee's termination notice that Lessor has elected to pay the difference between the actual cost thereof and an amount equal to 6 months' Base Rent. If Lessee elects termination, Lessee shall immediately cease the use of the Premises which requires such Capital Expenditure and deliver to Lessor written notice specifying a termination date at least 90 days thereafter. Such termination date shall, however, in no event be earlier than the last day that Lessee could legally utilize the Premises without commencing such Capital Expenditure.

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor and Lessee shall allocate the obligation to pay for such costs pursuant to the provisions of Paragraph 7.1(d); provided, however, that if such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.

(c) Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to non-voluntary, unexpected, and new Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall either: (i) immediately cease such changed use or intensity of use and/or take such other steps as may be necessary to eliminate the requirement for such Capital Expenditure, or (ii) complete such Capital Expenditure at its own expense. Lessee shall not, however, have any right to terminate this Lease.

2.4 **Acknowledgements.** Lessee acknowledges that: (a) it has been advised by Lessor and/or Brokers to satisfy itself with respect to the condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements and the Americans with Disabilities Act), and their suitability for Lessee's intended use, (b) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, and (c) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises, and (ii) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.

2.5 **Lessee as Prior Owner/Occupant.** The warranties made by Lessor in Paragraph 2 shall be of no force or effect if immediately prior to the Start Date Lessee was the owner or occupant of the Premises. In such event, Lessee shall be responsible for any necessary corrective work.

### 3. Term.

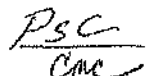
3.1 **Term.** The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

3.2 **Early Possession.** If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such early possession. All other terms of this Lease (including but not limited to the obligations to pay Real Property Taxes and insurance premiums and to maintain the Premises) shall, however, be in effect during such period. Any such early possession shall not affect the Expiration Date.

3.3 **Delay in Possession.** Lessor agrees to use its best commercially reasonable efforts to deliver possession of the Premises to Lessee by the Commencement Date. If, despite said efforts, Lessor is unable to deliver possession by such date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until Lessor delivers possession of the Premises and any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession is not delivered within 60 days after the Commencement Date, Lessee may, at its option, by notice in writing within 10 days after the end of such 60 day period, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said 10 day period, Lessee's right to cancel shall terminate. If possession of the Premises is not delivered within 120 days after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

3.4 **Lessee Compliance.** Lessor shall not be required to deliver possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (Paragraph 8.5). Pending delivery of such evidence, Lessee shall be required to perform all of its obligations under this Lease from and after the Start Date, including the payment of Rent, notwithstanding Lessor's election to withhold possession pending receipt of such evidence of insurance. Further, if Lessee is required to perform any other conditions prior to or concurrent with the Start Date, the Start Date shall occur but Lessor may elect to withhold possession until such conditions are satisfied.

  
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4. **Rent.**

4.1. **Rent Defined.** All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent ("Rent").

4.2. **Payment.** Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States on or before the day on which it is due, without offset or deduction (except as specifically permitted in this Lease). Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of \$25 in addition to any Late Charge and Lessor, at its option, may require all future payments to be made by Lessee to be by cashier's check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent and Operating Expense Increase, and any remaining amount to any other outstanding charges or costs.

4.3. **Association Fees.** In addition to the Base Rent, Lessee shall pay to Lessor each month an amount equal to any owner's association or condominium fees levied or assessed against the Premises. Said monies shall be paid at the same time and in the same manner as the Base Rent.

5. **Security Deposit.** Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount due Lessor or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional moneys with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 14 days after the expiration or termination of this Lease, if Lessor elects to apply the Security Deposit only to unpaid Rent, and otherwise within 30 days after the Premises have been vacated pursuant to Paragraph 7.4(c) below, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease.

6. **Use.**

6.1. **Use.** Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the improvements on the Premises or the mechanical or electrical systems therein, and/or is not significantly more burdensome to the Premises. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.

6.2. **Hazardous Substances.**

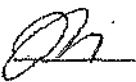
(a) **Reportable Uses Require Consent.** The term "Hazardous Substance" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. "Reportable Use" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, ordinary office supplies (copier toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

(b) **Duty to Inform Lessor.** If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

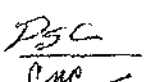
(c) **Lessee Remediation.** Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, comply with all Applicable Requirements and take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or any third party.

(d) **Lessee Indemnification.** Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from adjacent properties not caused or contributed to by Lessee). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.

(e) **Lessor Indemnification.** Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which



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result from Hazardous Substances which existed on the Premises prior to Lessee's occupancy or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

(f) **Investigations and Remediations.** Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to Lessee's occupancy, unless such remediation measure is required as a result of Lessee's use (including "Alterations", as defined in paragraph 7.3(a) below) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

(g) **Lessor Termination Option.** If a Hazardous Substance Condition (see Paragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or \$100,000, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent or \$100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

6.3 **Lessee's Compliance with Applicable Requirements.** Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to the such Requirements, without regard to whether such Requirements are now in effect or become effective after the Start Date. Lessee shall, within 10 days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements.

6.4 **Inspection; Compliance.** Lessor and Lessor's "Lender" (as defined in Paragraph 30) and consultants shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable notice, for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see paragraph 9.1) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (MSDS) to Lessor within 10 days of the receipt of a written request therefor.

## 7. Maintenance; Repairs; Utility Installations; Trade Fixtures and Alterations.

### 7.1 Lessee's Obligations.

(a) **In General.** Subject to the provisions of Paragraph 2.2 (Condition), 2.3 (Compliance), 6.3 (Lessee's Compliance with Applicable Requirements), 7.2 (Lessor's Obligations), 9 (Damage or Destruction), and 14 (Condemnation), Lessee shall, at Lessee's sole expense, keep the Premises, Utility Installations (intended for Lessee's exclusive use, no matter where located), and Alterations in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises), including, but not limited to, all equipment or facilities, such as plumbing, HVAC equipment, electrical, lighting facilities, boilers, pressure vessels, fire protection system, fixtures, walls (interior and exterior), foundations, ceilings, roofs, roof drainage systems, floors, windows, doors, plate glass, skylights, landscaping, driveways, parking lots, fences, retaining walls, signs, sidewalks and parkways located in, on, or adjacent to the Premises. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices, specifically including the procurement and maintenance of the service contracts required by Paragraph 7.1(b) below. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair. Lessee shall, during the term of this Lease, keep the exterior appearance of the Building in a first-class condition (including, e.g. graffiti removal) consistent with the exterior appearance of other similar facilities of comparable age and size in the vicinity, including, when necessary, the exterior repainting of the Building.

(b) **Service Contracts.** Lessee shall, at Lessee's sole expense, procure and maintain contracts, with copies to Lessor, in customary form and substance for, and with contractors specializing and experienced in the maintenance of the following equipment and improvements, if any, if and when installed on the Premises: (i) HVAC equipment, (ii) boiler, and pressure vessels, (iii) fire extinguishing systems, including fire alarm and/or smoke detection, (iv) landscaping and irrigation systems, (v) roof covering and drains, (vi) clarifiers (vii) basic utility feed to the perimeter of the Building, and (viii) any other equipment, if reasonably required by Lessor. However, Lessor reserves the right, upon notice to Lessee, to procure and maintain any or all of such service contracts, and if Lessor so elects, Lessee shall reimburse Lessor, upon demand, for the cost thereof.

(c) **Failure to Perform.** If Lessee fails to perform Lessee's obligations under this Paragraph 7.1, Lessor may enter upon the Premises after 10 days' prior written notice to Lessee (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Lessee's behalf, and put the Premises in good order, condition and repair, and Lessee shall promptly pay to Lessor a sum equal to 115% of the cost thereof.

(d) **Replacement.** Subject to Lessee's indemnification of Lessor as set forth in Paragraph 8.7 below, and without relieving Lessee of liability resulting from Lessee's failure to exercise and perform good maintenance practices, if an item described in Paragraph 7.1(b) cannot be repaired other than at a cost which is in excess of 50% of the cost of replacing such item, then such item shall be replaced by Lessor, and the cost thereof shall be prorated between the Parties and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease, on the date on which Base Rent is due, an amount equal to the product of multiplying the cost of such replacement by a fraction, the numerator of which is one, and the denominator of which is 144 (ie. 1/144th of the cost per month). Lessee shall pay interest on the unamortized balance at a rate that is commercially reasonable in the judgment of Lessor's accountants. Lessee may, however, prepay its obligation at any time.

7.2 **Lessor's Obligations.** Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 9 (Damage or Destruction) and 14 (Condemnation), it is intended by the Parties hereto that Lessor have no obligation, in any manner whatsoever, to repair and maintain the Premises, or the equipment therein, all of which obligations are intended to be that of the Lessee. It is the intention of the Parties that the terms of this Lease govern the respective obligations of the Parties as to maintenance and repair of the Premises, and they expressly waive the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

  
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### 7.3 Utility Installations; Trade Fixtures; Alterations.

(a) **Definitions.** The term "Utility Installations" refers to all floor and window coverings, air and/or vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, plumbing, and fencing in or on the Premises. The term "Trade Fixtures" shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term "Alterations" shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. "Lessee Owned Alterations and/or Utility Installations" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a).

(b) **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, and the cumulative cost thereof during this Lease as extended does not exceed a sum equal to 3 month's Base Rent in the aggregate or a sum equal to one month's Base Rent in any one year. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as-built plans and specifications. For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.

(c) **Liens; Bonds.** Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than 10 days notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Lessor shall require, Lessee shall furnish a surety bond in an amount equal to 150% of the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate in any such action, Lessee shall pay Lessor's attorneys' fees and costs.

### 7.4 Ownership; Removal; Surrender; and Restoration.

(a) **Ownership.** Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee, but considered a part of the Premises. Lessor may, at any time, elect in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per paragraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises.

(b) **Removal.** By delivery to Lessee of written notice from Lessor not earlier than 90 and not later than 30 days prior to the end of the term of this Lease, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent.

(c) **Surrender; Restoration.** Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Notwithstanding the foregoing, if this Lease is for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall completely remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Premises, or if applicable, the Project) even if such removal would require Lessee to perform or pay for work that exceeds statutory requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

### 8. Insurance; Indemnity.

8.1 **Payment For Insurance.** Lessee shall pay for all insurance required under Paragraph 8 except to the extent of the cost attributable to liability insurance carried by Lessor under Paragraph 8.2(b) in excess of \$2,000,000 per occurrence. Premiums for policy periods commencing prior to or extending beyond the Lease term shall be prorated to correspond to the Lease term. Payment shall be made by Lessee to Lessor within 10 days following receipt of an invoice.

#### 8.2 Liability Insurance.

(a) **Carried by Lessee.** Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$1,000,000 per occurrence with an annual aggregate of not less than \$2,000,000, an "Additional Insured-Managers or Lessors of Premises Endorsement" and contain the "Amendment of the Pollution Exclusion Endorsement" for damage caused by heat, smoke or fumes from a hostile fire. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. All insurance carried by Lessee shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

(b) **Carried by Lessor.** Lessor shall maintain liability insurance as described in Paragraph 8.2(a), in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

#### 8.3 Property Insurance - Building, Improvements and Rental Value.

(a) **Building and Improvements.** The Insuring Party shall obtain and keep in force a policy or policies in the name of Lessor, with loss payable to Lessor, any ground-lessor, and to any Lender insuring loss or damage to the Premises. The amount of such insurance shall be equal to the full replacement cost of the Premises, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. If Lessor is the Insuring Party, however, Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee under Paragraph 8.4 rather than by Lessor. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain

  
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an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed \$1,000 per occurrence, and Lessee shall be liable for such deductible amount in the event of an Insured Loss.

(b) **Rental Value.** The Insuring Party shall obtain and keep in force a policy or policies in the name of Lessor with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one year with an extended period of indemnity for an additional 180 days ("Rental Value insurance"). Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12 month period. Lessee shall be liable for any deductible amount in the event of such loss.

(c) **Adjacent Premises.** If the Premises are part of a larger building, or of a group of buildings owned by Lessor which are adjacent to the Premises, the Lessee shall pay for any increase in the premiums for the property insurance of such building or buildings if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

#### 8.4 Lessee's Property; Business Interruption Insurance.

(a) **Property Damage.** Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed \$1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations. Lessee shall provide Lessor with written evidence that such insurance is in force.

(b) **Business Interruption.** Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.

(c) **No Representation of Adequate Coverage.** Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease.

8.5 **Insurance Policies.** Insurance required herein shall be by companies duly licensed or admitted to transact business in the state where the Premises are located, and maintaining during the policy term a "General Policyholders Rating" of at least B+, V, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 30 days prior written notice to Lessor. Lessee shall, at least 30 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.

8.6 **Waiver of Subrogation.** Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

8.7 **Indemnity.** Except for Lessor's gross negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, the use and/or occupancy of the Premises by Lessee. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

8.8 **Exemption of Lessor from Liability.** Lessor shall not be liable for injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the building of which the Premises are a part, or from other sources or places. Lessor shall not be liable for any damages arising from any act or neglect of any other tenant of Lessor nor from the failure of Lessor to enforce the provisions of any other lease in the Project. Notwithstanding Lessor's negligence or breach of this Lease, Lessor shall under no circumstances be liable for injury to Lessee's business or for any loss of income or profit therefrom.

8.9 **Failure to Provide Insurance.** Lessee acknowledges that any failure on its part to obtain or maintain the insurance required herein will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, for any month or portion thereof that Lessee does not maintain the required insurance and/or does not provide Lessor with the required binders or certificates evidencing the existence of the required insurance, the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater. The parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to maintain the required insurance. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to maintain such insurance, prevent the exercise of any of the other rights and remedies granted hereunder, nor relieve Lessee of its obligation to maintain the insurance specified in this Lease.

#### 9. Damage or Destruction.

##### 9.1 Definitions.

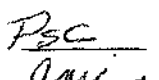
(a) **"Premises Partial Damage"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 6 months or less from the date of the damage or destruction. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(b) **"Premises Total Destruction"** shall mean damage or destruction to the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 6 months or less from the date of the damage or destruction. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) **"Insured Loss"** shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a), irrespective of any deductible amounts or coverage limits involved.

(d) **"Replacement Cost"** shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

  
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(e) "Hazardous Substance Condition" shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance as defined in Paragraph 6.2(a), in, on, or under the Premises which requires repair, remediation, or restoration.

**9.2 Partial Damage - Insured Loss.** If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is \$10,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds (except as to the deductible which is Lessee's responsibility) as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

**9.3 Partial Damage - Uninsured Loss.** If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

**9.4 Total Destruction.** Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate 60 days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor's damages from Lessee, except as provided in Paragraph 8.6.

**9.5 Damage Near End of Term.** If at any time during the last 6 months of this Lease there is damage for which the cost to repair exceeds one month's Base Rent, whether or not an Insured Loss, Lessor may terminate this Lease effective 60 days following the date of occurrence of such damage by giving a written termination notice to Lessee within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is 10 days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

**9.6 Abatement of Rent; Lessee's Remedies.**

(a) **Abatement.** In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired, but not to exceed the proceeds received from the Rental Value insurance. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

(b) **Remedies.** If Lessor shall be obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within 90 days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than 60 days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within 30 days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within such 30 days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

**9.7 Termination; Advance Payments.** Upon termination of this Lease pursuant to Paragraph 6.2(g) or Paragraph 9, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor.

**9.8 Waive Statutes.** Lessor and Lessee agree that the terms of this Lease shall govern the effect of any damage to or destruction of the Premises with respect to the termination of this Lease and hereby waive the provisions of any present or future statute to the extent inconsistent herewith.

**10. Real Property Taxes.**

**10.1 Definition.** As used herein, the term "Real Property Taxes" shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Premises or the Project, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Building address and where the proceeds so generated are to be applied by the city, county or other local taxing authority of a jurisdiction within which the Premises are located. Real Property Taxes shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Premises, and (ii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease.

**10.2 Payment of Taxes.** In addition to Base Rent, Lessee shall pay to Lessor an amount equal to the Real Property Tax installment due at least 20 days prior to the applicable delinquency date. If any such installment shall cover any period of time prior to or after the expiration or termination of this Lease, Lessee's share of such installment shall be prorated. In the event Lessee incurs a late charge on any Rent payment, Lessor may estimate the current Real Property Taxes, and require that such taxes be paid in advance to Lessor by Lessee monthly in advance with the payment of the Base Rent. Such monthly payments shall be an amount equal to the amount of the estimated installment of taxes divided by the number of months remaining before the month in which said installment becomes delinquent. When the actual amount of the applicable tax bill is known, the amount of such equal monthly advance payments

  
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shall be adjusted as required to provide the funds needed to pay the applicable taxes. If the amount collected by Lessor is insufficient to pay such Real Property Taxes when due, Lessee shall pay Lessor, upon demand, such additional sum as is necessary. Advance payments may be intermingled with other moneys of Lessor and shall not bear interest. In the event of a Breach by Lessee in the performance of its obligations under this Lease, then any such advance payments may be treated by Lessor as an additional Security Deposit.

**10.3 Joint Assessment.** If the Premises are not separately assessed, Lessee's liability shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be conclusively determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available.

**10.4 Personal Property Taxes.** Lessee shall pay, prior to delinquency, all taxes assessed against and levied upon Lessee Owned Alterations, Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee. When possible, Lessee shall cause its Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

**11. Utilities and Services.** Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. If any such services are not separately metered or billed to Lessee, Lessee shall pay a reasonable proportion, to be determined by Lessor, of all charges jointly metered or billed. There shall be no abatement of rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions.

**12. Assignment and Subletting.**

**12.1 Lessor's Consent Required.**

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, "assign or assignment") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent.

(b) Unless Lessee is a corporation and its stock is publicly traded on a national stock exchange, a change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of 25% or more of the voting control of Lessee shall constitute a change in control for this purpose.

(c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buy-out or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs, which results or will result in a reduction of the Net Worth of Lessee by an amount greater than 25% of such Net Worth as it was represented at the time of the execution of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater, shall be considered an assignment of this Lease to which Lessor may withhold its consent. "Net Worth of Lessee" shall mean the net worth of Lessee (excluding any guarantors) established under generally accepted accounting principles.

(d) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(c), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a noncurable Breach, Lessor may either: (i) terminate this Lease, or (ii) upon 30 days written notice, increase the monthly Base Rent to 110% of the Base Rent then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent.

(e) Lessee's remedy for any breach of Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.

**12.2 Terms and Conditions Applicable to Assignment and Subletting.**

(a) Regardless of Lessor's consent, no assignment or subletting shall: (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

(b) Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.

(c) Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

(d) In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee, any Guarantors or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefor to Lessor, or any security held by Lessor.

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of \$500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested. (See also Paragraph 36)

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment or entering into such sublease, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.

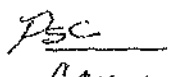
(g) Lessor's consent to any assignment or subletting shall not transfer to the assignee or sublessee any Option granted to the original Lessee by this Lease unless such transfer is specifically consented to by Lessor in writing. (See Paragraph 39.2)

**12.3 Additional Terms and Conditions Applicable to Subletting.** The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee's obligations any such excess shall be refunded to Lessee. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.

(b) In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor

  
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or for any prior Defaults or Breaches of such sublessor.

(c) Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.

(d) No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.

(e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

### 13. Default; Breach; Remedies.

**13.1 Default; Breach.** A "Default" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. A "Breach" is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

(a) The abandonment of the Premises; or the vacating of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 8.3 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism.

(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 3 business days following written notice to Lessee.

(c) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 42, (viii) material safety data sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.

(d) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 40 hereof, other than those described in subparagraphs 13.1(a), (b) or (c), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

(e) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a "debtor" as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this subparagraph (e) is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

(f) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false.

(g) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a Guarantor, (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a Guarantor's becoming insolvent or the subject of a bankruptcy filing, (iv) a Guarantor's refusal to honor the guaranty, or (v) a Guarantor's breach of its guaranty obligation on an anticipatory basis, and Lessee's failure, within 60 days following written notice of any such event, to provide written alternative assurance or security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the Guarantors that existed at the time of execution of this Lease.

**13.2 Remedies.** If Lessee fails to perform any of its affirmative duties or obligations, within 10 days after written notice (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor an amount equal to 115% of the costs and expenses incurred by Lessor in such performance upon receipt of an invoice therefor. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover damages under Paragraph 12. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

**13.3 Inducement Recapture.** Any agreement for free or abated rent or other charges, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as "Inducement Provisions," shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon Breach of this Lease by Lessee, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an inducement Provision shall be immediately due and payable by Lessee to Lessor, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the

  
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Breach which initiated the operation of this paragraph shall not be deemed a waiver by Lessor of the provisions of this paragraph unless specifically so stated in writing by Lessor at the time of such acceptance.

**13.4 Late Charges.** Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within 5 days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall immediately pay to Lessor a one-time late charge equal to 10% of each such overdue amount or \$100, whichever is greater. The Parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for 3 consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

**13.5 Interest.** Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due as to scheduled payments (such as Base Rent) or within 30 days following the date on which it was due for non-scheduled payment, shall bear interest from the date when due, as to scheduled payments, or the 31st day after it was due as to non-scheduled payments. The interest ("Interest") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

**13.6 Breach by Lessor.**

(a) **Notice of Breach.** Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than 30 days after receipt by Lessor, and any Lender whose name and address shall have been furnished Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than 30 days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such 30 day period and thereafter diligently pursued to completion.

(b) **Performance by Lessee on Behalf of Lessor.** In the event that neither Lessor nor Lender cures said breach within 30 days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion, then Lessee may elect to cure said breach at Lessee's expense and offset from Rent the actual and reasonable cost to perform such cure, provided however, that such offset shall not exceed an amount equal to the greater of one month's Base Rent or the Security Deposit, reserving Lessee's right to seek reimbursement from Lessor. Lessee shall document the cost of said cure and supply said documentation to Lessor.

**14. Condemnation.** If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "Condemnation"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the Building, or more than 25% of that portion of the Premises not occupied by any building, is taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

**15. Brokerage Fees.**

**15.1 Additional Commission.** In addition to the payments owed pursuant to Paragraph 1.9 above, and unless Lessor and the Brokers otherwise agree in writing, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee acquires any rights to the Premises or other premises owned by Lessor and located within the same Project, if any, within which the Premises is located, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the schedule of the Brokers in effect at the time of the execution of this Lease.

**15.2 Assumption of Obligations.** Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.9, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.

**15.3 Representations and Indemnities of Broker Relationships.** Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker or finder (other than the Brokers, if any) in connection with this Lease, and that no one other than said named Brokers is entitled to any commission or finder's fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

**16. Estoppel Certificates.**

(a) Each Party (as "Responding Party") shall within 10 days after written notice from the other Party (the "Requesting Party") execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current "Estoppel Certificate" form published by the American Industrial Real Estate Association, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate.

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past 3 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

**17. Definition of Lessor.** The term "Lessor" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessee's interest in the prior lease. In the event of a transfer of Lessor's title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held

  
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by Lessor. Except as provided in Paragraph 13, upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

18. **Severability.** The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

19. **Days.** Unless otherwise specifically indicated to the contrary, the word "days" as used in this Lease shall mean and refer to calendar days.

20. **Limitation on Liability.** The obligations of Lessor under this Lease shall not constitute personal obligations of Lessor or its partners, members, directors, officers or shareholders, and Lessee shall look to the Premises, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against Lessor's partners, members, directors, officers or shareholders, or any of their personal assets for such satisfaction.

21. **Time of Essence.** Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

22. **No Prior or Other Agreements; Broker Disclaimer.** This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the use, nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party. The liability (including court costs and attorneys' fees), of any Broker with respect to negotiation, execution, delivery or performance by either Lessor or Lessee under this Lease or any amendment or modification hereto shall be limited to an amount up to the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

23. **Notices.**

23.1 **Notice Requirements.** All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice. A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

23.2 **Date of Notice.** Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 48 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices transmitted by facsimile transmission or similar means shall be deemed delivered upon telephone confirmation of receipt (confirmation report from fax machine is sufficient), provided a copy is also delivered via delivery or mail. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

24. **Waivers.** No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent. The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of moneys or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

25. **Disclosures Regarding The Nature of a Real Estate Agency Relationship.**

(a) When entering into a discussion with a real estate agent regarding a real estate transaction, a Lessor or Lessee should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Lessor and Lessee acknowledge being advised by the Brokers in this transaction, as follows:

(i) **Lessor's Agent.** A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor's agent or subagent has the following affirmative obligations: To the Lessor: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessor. To the Lessee and the Lessor: a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(ii) **Lessee's Agent.** An agent can agree to act as agent for the Lessee only. In these situations, the agent is not the Lessor's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Lessor. An agent acting only for a Lessee has the following affirmative obligations. To the Lessee: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessee. To the Lessee and the Lessor: a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(iii) **Agent Representing Both Lessor and Lessee.** A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee. In a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee: a. A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Lessor or the Lessee. b. Other duties to the Lessor and the Lessee as stated above in subparagraphs (i) or (ii). In representing both Lessor and Lessee, the agent may not without the express permission of the respective Party, disclose to the other Party that the Lessor will accept rent in an amount less than that indicated in the listing or that the Lessee is willing to pay a higher rent than that offered. The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

(b) Brokers have no responsibility with respect to any default or breach hereof by either Party. The liability (including court costs and attorneys' fees), of any Broker with respect to any breach of duty, error or omission relating to this Lease shall not exceed the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

(c) Lessor and Lessee agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.

  
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26. **No Right To Holdover.** Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Lessee holds over, then the Base Rent shall be increased to 150% of the Base Rent applicable immediately preceding the expiration or termination. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

27. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

28. **Covenants and Conditions; Construction of Agreement.** All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

29. **Binding Effect; Choice of Law.** This Lease shall be binding upon the Parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located.

30. **Subordination; Attornment; Non-Disturbance.**

30.1 **Subordination.** This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, "Security Device"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as "Lender") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

30.2 **Attornment.** In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Device to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Paragraph 30.3, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remainder of the term hereof, or, at the election of such new owner, this Lease shall automatically become a new Lease between Lessee and such new owner, upon all of the terms and conditions hereof, for the remainder of the term hereof, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations hereunder, except that such new owner shall not: (a) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (b) be subject to any offsets or defenses which Lessee might have against any prior lessor, (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor.

30.3 **Non-Disturbance.** With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a "Non-Disturbance Agreement") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within 60 days after the execution of this Lease, Lessor shall use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said 60 days, then Lessee may, at Lessee's option, directly contact Lender and attempt to negotiate for the execution and delivery of a Non-Disturbance Agreement.

30.4 **Self-Executing.** The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.

31. **Attorneys' Fees.** If any Party or Broker brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "Prevailing Party" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach (\$200 is a reasonable minimum per occurrence for such services and consultation).

32. **Lessor's Access; Showing Premises; Repairs.** Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable prior notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises as long as there is no material adverse effect to Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee.

33. **Auctions.** Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent. Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to permit an auction.

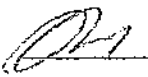
34. **Signs.** Lessor may place on the Premises ordinary "For Sale" signs at any time and ordinary "For Lease" signs during the last 6 months of the term hereof. Except for ordinary "for sublease" signs, Lessee shall not place any sign upon the Premises without Lessor's prior written consent. All signs must comply with all Applicable Requirements.

35. **Termination; Merger.** Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

36. **Consents.** Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

37. **Guarantor.**

37.1 **Execution.** The Guarantors, if any, shall each execute a guaranty in the form most recently published by the American

  
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Industrial Real Estate Association, and each such Guarantor shall have the same obligations as Lessee under this Lease.

**37.2 Default.** It shall constitute a Default of the Lessee if any Guarantor fails or refuses, upon request to provide: (a) evidence of the execution of the guaranty, including the authority of the party signing on Guarantor's behalf to obligate Guarantor, and in the case of a corporate Guarantor, a certified copy of a resolution of its board of directors authorizing the making of such guaranty, (b) current financial statements, (c) an Estoppel Certificate, or (d) written confirmation that the guaranty is still in effect.

**38. Quiet Possession.** Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

**39. Options.** If Lessee is granted an Option, as defined below, then the following provisions shall apply:

**39.1 Definition.** "Option" shall mean: (a) the right to extend the term of or renew this Lease or to extend or renew any lease that Lessee has on other property of Lessor; (b) the right of first refusal or first offer to lease either the Premises or other property of Lessor; (c) the right to purchase or the right of first refusal to purchase the Premises or other property of Lessor.

**39.2 Options Personal To Original Lessee.** Any Option granted to Lessee in this Lease is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting.

**39.3 Multiple Options.** In the event that Lessee has any multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options have been validly exercised.

**39.4 Effect of Default on Options.**

(a) Lessee shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee), (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessee has been given 3 or more notices of separate Default, whether or not the Defaults are cured, during the 12 month period immediately preceding the exercise of the Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of Paragraph 39.4(a).

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term or completion of the purchase, (i) Lessee fails to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), or (ii) if Lessee commits a Breach of this Lease.

**40. Multiple Buildings.** If the Premises are a part of a group of buildings controlled by Lessor, Lessee agrees that it will abide by and conform to all reasonable rules and regulations which Lessor may make from time to time for the management, safety, and care of said properties, including the care and cleanliness of the grounds and including the parking, loading and unloading of vehicles, and to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessee also agrees to pay its fair share of common expenses incurred in connection with such rules and regulations.

**41. Security Measures.** Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties.

**42. Reservations.** Lessor reserves to itself the right, from time to time, to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, and to cause the recordation of parcel maps and restrictions, so long as such easements, rights, dedications, maps and restrictions do not unreasonably interfere with the use of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate any such easement rights, dedication, map or restrictions.

**43. Performance Under Protest.** If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay.

**44. Authority; Multiple Parties; Execution.**

(a) If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. Each party shall, within 30 days after request, deliver to the other party satisfactory evidence of such authority.

(b) If this Lease is executed by more than one person or entity as "Lessee", each such person or entity shall be jointly and severally liable hereunder. It is agreed that any one of the named Lessees shall be empowered to execute any amendment to this Lease, or other document ancillary thereto and bind all of the named Lessees, and Lessor may rely on the same as if all of the named Lessees had executed such document.

(c) This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

**45. Conflict.** Any conflict between the printed provisions of this Lease and typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

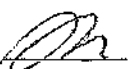
**46. Offer.** Preparation of this Lease by either Party or their agent and submission of same to the other Party shall not be deemed an offer to lease to the other Party. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

**47. Amendments.** This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises.

**48. Waiver of Jury Trial.** THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS AGREEMENT.

**49. Mediation and Arbitration of Disputes.** An Addendum requiring the Mediation and/or the Arbitration of all disputes between the Parties and/or Brokers arising out of this Lease ☐ is ☐ is not attached to this Lease.

**50. Americans with Disabilities Act.** Since compliance with the Americans with Disabilities Act (ADA) is dependent upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in ADA compliance, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense.



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LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

**ATTENTION:** NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AMERICAN INDUSTRIAL REAL ESTATE ASSOCIATION OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.
2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.

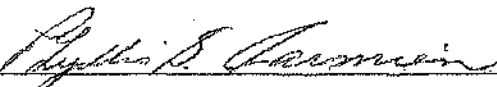
**WARNING:** IF THE PREMISES ARE LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED.

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

Executed at: \_\_\_\_\_  
on: 12-9-02

By LESSOR:

Carmien Family 1991 Trust

By:   
Name Printed: PHYLLIS S. CARMEN  
Title: CO-TRUSTEE

By: WELLS FARGO BANK N.A.

Name Printed: BY:  
Title: CO-TRUSTEE

Address: \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_

Facsimile: ( ) \_\_\_\_\_

Federal ID No. \_\_\_\_\_

BROKER:

\_\_\_\_\_

Attn: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_

Facsimile: ( ) \_\_\_\_\_


Email: \_\_\_\_\_

Federal ID No. \_\_\_\_\_

Executed at: 5 Howard St. Ct.  
on: 12/9/02

By LESSEE:

Nupla Acquisition Corporation,  
a California corporation

By:   
Name Printed: Robert Perry  
Title: Pres. & CEO

By: \_\_\_\_\_

Name Printed: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_

Facsimile: ( ) \_\_\_\_\_

Federal ID No. \_\_\_\_\_

BROKER:

\_\_\_\_\_

Attn: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_

Facsimile: ( ) \_\_\_\_\_

Email: \_\_\_\_\_

Federal ID No. \_\_\_\_\_

NOTE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AMERICAN INDUSTRIAL REAL ESTATE ASSOCIATION, 700 So. Flower Street, Suite 600, Los Angeles, California 90017. (213) 687-8777. Fax No. (213) 687-8616

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# OPTION(S) TO EXTEND

## STANDARD LEASE ADDENDUM

Dated November 11, 2002

By and Between (Lessor) Carmien Family 1991 Trust

(Lessee) Nupla Acquisition Corporation

Address of Premises: 11912 Sheldon Street  
Sun Valley, CA 91352

Paragraph 51

### A. OPTION(S) TO EXTEND:

Lessor hereby grants to Lessee the option to extend the term of this Lease for One (1) additional sixty (60) month period(s) commencing when the prior term expires upon each and all of the following terms and conditions:

(i) In order to exercise an option to extend, Lessee must give written notice of such election to Lessor and Lessor must receive the same at least 6 but not more than 12 months prior to the date that the option period would commence, time being of the essence. If proper notification of the exercise of an option is not given and/or received, such option shall automatically expire. Options (if there are more than one) may only be exercised consecutively.

(ii) The provisions of paragraph 39, including those relating to Lessee's Default set forth in paragraph 39.4 of this Lease, are conditions of this Option.

(iii) Except for the provisions of this Lease granting an option or options to extend the term, all of the terms and conditions of this Lease except where specifically modified by this option shall apply.

(iv) This Option is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and without the intention of thereafter assigning or subletting.

(v) The monthly rent for each month of the option period shall be calculated as follows, using the method(s) indicated below:

(Check Method(s) to be Used and Fill in Appropriately)

#### ☒ I. Cost of Living Adjustment(s) (COLA)

a. On (Fill in COLA Dates): June 1, 2005 and on the anniversary date each year thereafter

the Base Rent shall be adjusted by the change, if any, from the Base Month specified below, in the Consumer Price Index of the Bureau of Labor Statistics of the U.S. Department of Labor for (select one): ☐ CPI W (Urban Wage Earners and Clerical Workers) or ☐ CPI U (All Urban Consumers), for (Fill in Urban Area): Los Angeles-Riverside-Orange County, California  
All Items (1982-1984 = 100), herein referred to as "CPI"

b. The monthly rent payable in accordance with paragraph A.i.a. of this Addendum shall be calculated as follows: the Base Rent set forth in paragraph 4.5 of the attached Lease, shall be multiplied by a fraction the numerator of which shall be the CPI of the calendar month 2 months prior to the month(s) specified in paragraph A.i.a. above during which the adjustment is to take effect, and the denominator of which shall be the CPI of the calendar month which is 2 months prior to (select one): ☐ the first month of the term of this Lease as set forth in paragraph 1.3 ("Base Month") or ☐ (Fill in Other "Base Month"): May, 2004. The sum so calculated shall constitute the new monthly rent hereunder, but in no event, shall any such new monthly rent be less than the rent payable for the month immediately preceding the rent adjustment.

c. In the event the compilation and/or publication of the CPI shall be transferred to any other governmental department or bureau or agency or shall be discontinued, then the index most nearly the same as the CPI shall be used to make such calculation. In the event that the Parties cannot agree on such alternative index, then the matter shall be submitted for decision to the American Arbitration Association in accordance with the then rules of said Association and the decision of the arbitrators shall be binding upon the parties. The cost of said Arbitration shall be paid equally by the Parties.

#### ☐ II. Market Rental Value Adjustment(s) (MRV)

a. On (Fill in MRV Adjustment Date(s)) \_\_\_\_\_

the Base Rent shall be adjusted to the "Market Rental Value" of the property as follows:

1) Four months prior to each Market Rental Value Adjustment Date described above, the Parties shall attempt to agree upon what the new MRV will be on the adjustment date. If agreement cannot be reached, within 30 days, then:

(a) Lessor and Lessee shall immediately appoint a mutually acceptable appraiser or broker to establish the new MRV within the next 30 days. Any associated costs will be split equally between the Parties, or

(b) Both Lessor and Lessee shall each immediately make a reasonable determination of the MRV and submit such determination, in writing, to arbitration in accordance with the following provisions:

(i) Within 15 days thereafter, Lessor and Lessee shall each select an ☐ appraiser or ☐ broker ("Consultant" - check one) of their choice to act as an arbitrator. The two arbitrators so appointed shall immediately select a third mutually acceptable Consultant to act as a third arbitrator.

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(ii) The three arbitrators shall within 30 days of the appointment of the third arbitrator reach a decision as to what the actual MRV for the Premises is, and whether Lessor's or Lessee's submitted MRV is the closest thereto. The decision of a majority of the arbitrators shall be binding on the Parties. The submitted MRV which is determined to be the closest to the actual MRV shall thereafter be used by the Parties.

(iii) If either of the Parties fails to appoint an arbitrator within the specified 15 days, the arbitrator timely appointed by one of them shall reach a decision on his or her own, and said decision shall be binding on the Parties.

(iv) The entire cost of such arbitration shall be paid by the party whose submitted MRV is not selected, ie. the one that is NOT the closest to the actual MRV.

2. Notwithstanding the foregoing, the new MRV shall not be less than the rent payable for the month immediately preceding the rent adjustment.

b. Upon the establishment of each New Market Rental Value:

1. the new MRV will become the new "Base Rent" for the purpose of calculating any further Adjustments, and
2. the first month of each Market Rental Value term shall become the new "Base Month" for the purpose of calculating any further Adjustments.

☐ **III. Fixed Rental Adjustment(s) (FRA)**

The Base Rent shall be increased to the following amounts on the dates set forth below:

On (Fill in FRA Adjustment Date(s)):	The New Base Rent shall be:
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

**B. NOTICE:** Unless specified otherwise herein, notice of any rental adjustments, other than Fixed Rental Adjustments, shall be made as specified in paragraph 23 of the Lease.

**C. BROKER'S FEE:**

The Brokers shall be paid a Brokerage Fee for each adjustment specified above in accordance with paragraph 15 of the Lease.

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OPTION(S) TO EXTEND  
Page 2 of 2



# RIGHT OF FIRST REFUSAL TO PURCHASE

## STANDARD LEASE ADDENDUM

Dated November 11, 2002

By and Between (Lessor) Carmien Family 1991 Trust

(Lessee) Nupla Acquisition Corporation,  
a California corporation

Address of Premises 11912 Sheldon Street  
San Valley, CA 91352

Paragraph 52

(a) Lessor shall not, at any time prior to the expiration of the term of this Lease, or any extension thereof, sell the Premises, or any interest therein, without first giving written notice thereof to Lessee, which notice is hereinafter referred to as "Notice of Sale".

(b) The Notice of Sale shall include the exact and complete terms of the proposed sale and shall have attached thereto a copy of the bona fide offer and counteroffer, if any, duly executed by both Lessor and the prospective purchaser.

(c) For a period of 12 calendar days after receipt by Lessee of the Notice of Sale, Lessee shall have the right to give written notice to Lessor of Lessee's exercise of Lessee's right to purchase the Premises, the interest therein proposed to be sold, or the property of which the Premises are a part, on the same terms, price and conditions as set forth in the Notice of Sale. In the event that Lessor does not receive written notice of Lessee's exercise of the right herein granted within said 12 day period, there shall be a conclusive presumption that Lessee has elected NOT to exercise Lessee's right hereunder, and Lessor may complete the sale to the prospective purchaser, on the same terms set forth in the Notice of Sale.

(d) In the event that Lessee declines to exercise its right of first refusal after receipt of the Notice of Sale, and, thereafter, Lessor and the prospective purchaser modify by more than 5%, (i) the sales price, or (ii) the amount of down payment, or if there is a material change in any Seller financing offered, or in the event that the sale is not consummated within 180 days of the date of the Notice of Sale, then Lessee's right of first refusal shall reapply to said transaction.

(e) In the event that Lessee declines to exercise its right of first refusal after receipt of the Notice of Sale, and, thereafter, the proposed transfer or sale is not consummated, then Lessee's right of first refusal shall apply to any subsequent transaction. If, however, said transfer or sale is, in fact, completed, then said right shall be extinguished and shall not apply to any subsequent transactions.

(f) Notwithstanding the above, this right of first refusal is intended to apply only to voluntary transfers involving third party transferees. This right of first refusal shall not, therefore, apply: where the Premises are taken by eminent domain or sold under threat of condemnation, to inter-family or inter-ownership transfers, to transfers by Lessor to a trust created by Lessor, or, if Lessor is a trust, to transfers to a trust beneficiary.

(g) NOTE: This right of first refusal cannot be exercised: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee), (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessee has been given 3 or more notices of Default, whether or not the Defaults are cured, during the 12 month period immediately preceding the exercise of the right of first refusal.

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**ADDENDUM TO AMERICAN INDUSTRIAL REAL ESTATE ASSOCIATION  
STANDARD INDUSTRIAL/COMMERCIAL SINGLE-TENANT LEASE - NET**

The American Industrial Real Estate Association Standard Industrial/Commercial Single-Tenant Lease - Net ("Lease"), to which this Addendum is attached and incorporated into by this reference, is hereby modified and amended as follows, notwithstanding any provision of the Lease to the contrary:

1. **BROKER'S COMPENSATION:** Notwithstanding any other provision of the Lease, Wells Fargo Bank, N.A., in its fiduciary capacity, only agrees to pay Broker as a commission N/A

The commission shall be earned and payable only N/A

Any fee or commission due to any other broker in connection with the Lease shall be paid by Broker prior to or concurrently with

payment by Wells Fargo Bank, N.A., in its fiduciary capacity, to Broker.

2. **EXCULPATION OF WELLS FARGO BANK, N.A.:** It is understood and agreed by Lessee that Wells Fargo Bank, N.A. is executing this Lease in its fiduciary capacity only and Wells Fargo Bank, N.A., in all capacities, and Wells Fargo Bank, N.A.'s affiliates, shareholders, officers, directors, employees and agents are not and shall not be liable hereunder, directly or indirectly, except for willful misconduct, under or by execution of this Lease. The rights and claims of Lessee or Broker as against Wells Fargo Bank, N.A., in any capacity, shall be limited exclusively to such rights as Lessee or Broker may have against the trust or other estate or entity represented herein by Wells Fargo Bank, N.A. Any liability of Wells Fargo Bank, N.A., in any capacity (including without limitation Wells Fargo Bank, N.A.'s shareholders, officers, directors, affiliates, agents, and employees) to Lessee, Broker or any other person shall be limited to the estate of the trust or other estate or entity represented herein by Wells Fargo Bank, N.A. in the subject property leased. Lessee, Broker or any other person claiming through Lessee or Broker agrees to look solely to such interest for the recovery of any judgment against Wells Fargo Bank, N.A., in any capacity. It is the intent of the parties that neither (a) such trust or other estate or entity represented herein by Wells Fargo Bank, N.A., (b) its trustees or beneficiaries, nor (c) any other assets of such trust or other estate or entity represented herein by Wells Fargo Bank, N.A. or its trustees or beneficiaries shall be liable for any such judgment.

3. **APPROVALS:** The obligations of Wells Fargo Bank, N.A., in its fiduciary capacity, under this Lease are expressly contingent upon obtaining court approval, if required, and approval of the required management persons or committee at Wells Fargo Bank, N.A., and all other owners of interests in the subject property, if any.

4. **[CHECK IF APPLICABLE] MULTIPLE OWNERS:** The undersigned Other Owners (multiple owners) each agree to perform in accordance with this Lease as Lessor. In the event any such party fails to perform his, her or its obligations under this Lease, such defaulting party agrees to hold harmless and indemnify the other co-owners for and against any and all claims, liabilities, or expenses of any kind whatsoever which such co-owners may incur as a result of such failure to perform.

5. **CONDITION:** The subject property leased, including any fixtures, and any personal property, is being leased in its "AS IS" condition, without any expressed or implied warranties. Any and all representations and warranties of Lessor set forth in the Lease are hereby deleted. Lessee hereby represents that Lessee or Lessee's agents have inspected the subject property to the full extent deemed appropriate and that Lessee is satisfied with its condition. Lessee acknowledges that as of the date of this Lease, the subject property and the Premises and improvements are in good order, repair, and condition. Lessor shall not be liable to Lessee or any person for any latent or existing defect in the subject property, or for any injury or damages that may result to any person or property, including, without limitation, the person or property of Lessee, by or from any cause whatsoever arising out of the present actual or latent condition of the subject property.

6. **INDEPENDENT INVESTIGATION:** Lessee has not relied on any acts, including any written or oral statements, by Wells Fargo Bank, N.A., in its fiduciary capacity, or any person acting on behalf of Wells Fargo Bank, N.A., in its fiduciary capacity, in entering into this Lease, but rather has relied on his, her or its own independent investigation of the subject property.

7. **MATTERS OF RECORD:** Lessee agrees to accept the property leased subject to any and all covenants, conditions, restrictions, reservations, rights, rights-of-way, and easements of record, if any.

8. **BROKER'S INDEMNITY:** Broker agrees to indemnify and hold Wells Fargo Bank, N.A., in all capacities, free and harmless of and from any and all claims, liability, demands, suits, actions or judgments, made, brought or recovered against Wells Fargo Bank, N.A., in any capacity, or Broker, or both, and all damages, costs and expenses, including attorneys' fees, incurred by Wells Fargo Bank, N.A., in any capacity, in connection with or in any way arising from Broker's negligence or willful misconduct in connection with this Lease, including, without limitation, (a) Broker's unauthorized written or oral representations; (b) Broker's use of unauthorized advertising materials; (c) any claim or claims for commissions made against Wells Fargo Bank, N.A., in any capacity, by any other broker or salesman arising out of or connected with Broker's acts or omissions in connection with this Lease. Wells Fargo Bank, N.A., in its fiduciary capacity, agrees to save and hold harmless Broker only from such damages, claims, disputes, litigation, and/or judgments arising from any knowingly incorrect information supplied by Wells Fargo Bank, N.A., in its fiduciary capacity, or from any material fact actually known by Wells Fargo Bank, N.A., in its fiduciary capacity, concerning the subject property leased which Wells Fargo Bank, N.A., in its fiduciary capacity, fails to disclose to Broker.

9. **ADA:** Lessee's obligations to comply with all laws shall include, but not be limited to, the Americans with Disabilities Act and all similar laws enacted in the future.

10. **INTRABUILDING NETWORK CABLES:** Regardless of any provisions of this Lease to the contrary, Lessor and Lessee agree as follows:

(a) **Cabling and Equipment.** Unless Lessor expressly elects to perform the work, in which case all costs incurred will be passed through to the Lessee, Lessee will be responsible, at Lessee's sole cost, for the installation, maintenance, and repair of all telecommunication cabling, wiring, and risers running throughout the subject property serving Lessee, together with all of Lessee's telephones, telecopiers, computers, telephone switching, telephone panels, and related equipment. Lessee agrees to install, maintain, and repair such telecommunication cabling, wiring, and risers in a good and proper manner.

(b) **Right of Entry.** In addition to Lessor's other rights of entry under this Lease, Lessor may enter the leased Premises to inspect the telecommunication cabling, wiring, and risers to assure that the installation, maintenance, and repair are being performed in a good and proper manner.

(c) **Approval of Provider.** Lessee agrees to have the installation, maintenance, and repair of the telecommunication cabling, wiring, and risers done by an independent contractor approved by Lessor in writing in advance.

(d) **Indemnity.** Lessee agrees to indemnify, release, defend, and hold Lessor harmless against any damages, claims, or other liability resulting from Lessee's installation, repair, or maintenance of the telecommunication cabling, wiring, and risers, including, but not limited to, the costs of repair.

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i) Release. Lessee releases Lessor from all losses, claims, injuries, damages, or other liability, including, but not limited to, consequential damages, whether to persons or property and no matter how caused, in any way connected with the interruption of telecommunications services due to the failure of any telecommunications cabling, wiring, or risers. Lessee expressly waives the right to claim that any interruption constitutes grounds for a claim of abatement of rent, of constructive eviction, or for termination of the Lease.

(f) Restrictions on Tenant Repairs. Regardless of Lessee's other rights under the Lease to make alterations to the leased Premises, Lessee may not alter or modify the telecommunication cabling, wiring, and risers located in the leased premises or otherwise without Lessor's prior written consent.

1. **ARBITRATION:**

a) Except with regard to any claim, counterclaim, dispute, and other matter relating to the payment of rent or any other sum owing from Lessee to Lessor under this Lease, Lessor and Lessee agree that, if and to the extent that any claim, counterclaim, dispute, and other matter in question between them arising out of or relating to this Lease or the breach thereof collectively, "Non-Monetary Disputes") cannot be resolved through direct discussions, such Non-Monetary Dispute shall at the election of either party be submitted to arbitration in accordance with this subsection (a). In the event either party elects to submit any Non-Monetary Dispute to arbitration, the judgment or the award rendered in any such arbitration may be entered in any court having jurisdiction and shall be final and binding upon the parties. The arbitration shall be conducted in accordance with the then prevailing rules of the American Arbitration Association or its successor for arbitration of commercial disputes, and the provisions of California Code of Civil Procedure Section 1283.05, or any successor or amended statute or law containing similar provisions.

b) The arbitrator shall award to the prevailing party, if any, as determined by the arbitrator, all of its costs and fees. "Costs and fees" shall mean all expenses of the arbitration, including the arbitrators' fees, administrative fees, travel expenses, out-of-pocket expenses, such as copying and telephone, court costs, witness fees and attorneys fees.

c) Notwithstanding the foregoing, nothing contained in this section shall be deemed to limit or restrict Lessor's rights to file in unlawful detainer action under California Code of Civil Procedure § 1161 et. seq. and obtain a judgment thereunder.

12. **Section 2.4 is hereby amended to read as follows:**

2.4. **Acceptance of Premises.** Lessee hereby acknowledges: (a) that it has been advised by the Broker(s) to satisfy itself with respect to the condition of the Premises (including but not limited to the electrical and fire sprinkler systems, security, environmental aspects, seismic and earthquake requirements, and compliance with the Americans with Disabilities Act and applicable zoning, municipal, county, state and federal laws, ordinances and regulations and any covenants or restrictions of record (collectively, "Applicable Laws") and the present and future suitability of the Premises for Lessee's intended use; (b) that Lessee has made such investigation as it deems necessary with reference to such matters, is satisfied with reference thereto, and assumes all responsibility therefore as the same relate to Lessee's occupancy of the Premises and/or the terms of this Lease; and (c) that neither Lessor, nor any of Lessor's agents, has made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease.

13. **LESSEE OBLIGATIONS:** The obligations of Lessee other than rent under this Lease shall not be limited in any manner by the total amount of rent or term of Lease, and shall be limited only as may be specifically and explicitly limited by an express provision of this Lease.

14. **LESSOR INSURANCE:** Notwithstanding any provision of this Lease to the contrary, Lessor shall have no obligation of any kind whatsoever to carry any insurance policy or coverage of any kind or in any specified amount.

15. **ENVIRONMENTAL:** Lessee shall furnish Lessor a copy of any hazardous waste removal contract in force at any time during Lessee's occupancy of the Premises. All such contracts shall provide that the contracting party shall give written notice of any termination of the contract to Lessor.

16. **INSPECTIONS:** Lessee shall reimburse Lessor for all costs incurred by Lessor, if any, for inspections by environmental, health or safety experts deemed necessary or appropriate by Lessor to assure Lessee's compliance with Applicable Law.

17. **Sections 15.1, 15.2, 15.3, 15.4 and 15.8 are hereby deleted in their entirety.**

The parties have executed this Addendum as of the date of the Lease.

LESSOR:

WELLS FARGO BANK, N.A., in its fiduciary capacity, as Co-Trustee of the Carmien Family 1991 Trust

By: Phyllis S. Carmien

Title: VICE PRESIDENT

Date: Phyllis S. Carmien  
Phyllis S. Carmien, in her fiduciary capacity as co-Trustee of the

By: Carmien Family 1991 Trust

Title:

Date:

OTHER OWNERS:

LESSEE:

BROKER:

NAME:

Nupla Acquisition Corporation

By: [Signature]

Title: President & CEO

By:

Title:

Date:

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**ADDENDUM  
TO  
STANDARD INDUSTRIAL/COMMERCIAL  
SINGLE-TENANT LEASE - NET  
(AMERICAN INDUSTRIAL REAL ESTATE ASSOCIATION)**

Lessee: NUPLA Acquisition Corporation, a California Corporation

Lessor: Carmien Family 1991 Trust

Premises: 11912 Sheldon Street, Sun Valley, CA 91352

Date of Lease: November 11, 2002

This Addendum ("Addendum") is executed on the date and year hereinafter set forth, by and between Lessee and Lessor with respect to the Lease referred to above (the "Lease"). The paragraphs of the Lease which are referred to below, and any other inconsistent provisions of the Lease, are superseded to the extent of the terms and conditions set forth in this Addendum.

Lessor and Lessee agree to amend and modify the Lease as follows:

53. Commencement Date. The Commencement date shall be the date of execution of the Lease.
54. Base Rent. The Monthly Base Rent shall be \$24,450 per month for the lease term. Monthly Base Rent shall be due and payable on the first (1<sup>st</sup>) of each calendar month. Pursuant to paragraph 1.6, Lessee shall pay for

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one full month of Base Rent upon execution of the Lease. If the Commencement Date begins on a day other than the first day of a calendar month, then the Monthly Base Rent for the second month and the last month of the lease term shall be adjusted and prorated for the partial month period which begins on a day other than the first or end on a day other than the last day of the month.

55. Environmental Compliance. Upon the effective date of this Lease and except as otherwise disclosed in Schedule J which is attached to the Asset Purchase Agreement between NUPLA Acquisition Corporation, a California Corporation, and NUPLA Corporation, a Delaware Corporation, and the Carmien Family 1991 Trust and by this referenced incorporated herein as part of this Addendum, the Premises are currently in material compliance with all applicable Environmental Laws and are currently not subject to any Environmental Condition or Hazardous Condition.
56. American With Disabilities Act. Notwithstanding any provision in the Lease to the contrary, the Premises' current use and condition are in material compliance with applicable American With Disabilities Act ("ADA") as of the Commencement Date. Lessee shall be solely responsible for complying with ADA if such ADA compliance is caused by Lessee altering or changing the use of the Premises or Lessee constructing any improvements on the Premises or is caused by future amendments or revisions in the applicable laws and regulations under ADA.
57. Lessee's Right to Terminate. Lessee shall have the right to terminate this Lease upon the occurrence of each and all of the following terms and

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conditions:

- a. A Hazardous Substance Condition ("HSC") is discovered after the Commencement date and the HSC is the responsibility of Lessor because it existed prior to the Commencement Date.
- b. The HSC materially interferes with Lessee's operation and business.
- c. Lessee gives written notice to Lessor of such HSC;
- c. After notice, Lessor shall be given a reasonable time to investigate and determine the cost to remediate the HSC and if Lessor determines the cost is too unreasonably high and elects not to remediate the HSC.

THIS ADDENDUM TO LEASE IS EXECUTED ON THE DATE  
HEREINAFTER SET FORTH.

Dated: 12-9-, 2002

LESSOR:

Carmien Family 1991 Trust

By: Wells Fargo Bank NA,  
as co-Trustee

By: Cynthia M. Carmien

Its: VICE PRESIDENT

By: Phyllis S. Carmien  
Phyllis S. Carmien, as co-Trustee

LESSEE:

NDPLA Acquisition Corporation,  
A Delaware Corporation

by: *C. Carmien*  
Its: President & CEO

by: \_\_\_\_\_

its: \_\_\_\_\_

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### ADDENDUM NUMBER THREE TO LEASE

The foregoing Lease is entered into as a part of and pursuant to a Nupla Asset Purchase Agreement and a Trust Asset Purchase Agreement by and between the Lessee and the Lessor. For purposes of this Addendum, the terms "Environmental Law," "Environmental Condition," "Hazardous Condition," and "Hazardous Substance" shall have the same meaning as defined therefor in Section 4.17 of the Nupla Asset Purchase Agreement.

After extensive discussion and consideration, with respect to the Premises, the Lessor and the Lessee have reached an understanding and agreement that the Lessor shall be responsible for and shall pay any loss, cost, damage, liability, or expense that arises or results from any Environmental Condition or Hazardous Condition or the violation of or lack of compliance with any Environmental Law that was in existence or occurred prior to the Commencement Date, and that Lessee shall be responsible for and shall pay any loss, cost, damage, liability, or expense that arises or results from any Environmental Condition or Hazardous Condition or the violation of or lack of compliance with any Environmental Law that comes into existence or occurs after the Commencement Date and within the Term of the Lease.

Therefore, in addition to and notwithstanding the terms and conditions contained within the foregoing Lease, the following terms and conditions shall be and are hereby added to and shall be and become a part of said Lease:

With respect to the Premises, Lessor shall indemnify and defend Lessee and hold the Lessee harmless from and against any and all claims, demands, loss, cost, expense, damage, or liability of any and every kind or nature (including without limitation attorney's fees, court costs, collection expenses, and litigation costs and expenses) which arise or result from or are related to (i) any claim for personal injury or property damage arising from any violation or lack of compliance by the Lessor prior to the Commencement Date of any Environmental Law, or any Environmental Condition or Hazardous Condition that existed on the Premises prior to the Commencement Date, and/or (ii) any and all claims, demands, loss, cost, expense, damage, or liability sustained or incurred by the Lessee for the containment, cleanup, corrective action, remediation, removal, remedy, repair, response, addition or upgrade of equipment, site work, or abatement or every kind or nature arising from any Environmental Condition or Hazardous Condition in or on the Premises prior to the Commencement Date or any violation by the Lessor of any Environmental Law prior to the Commencement Date.

With respect to the Premises, Lessee shall indemnify and defend Lessor and hold the Lessor harmless from and against any and all claims, demands, loss, cost, expense, damage, or liability of any and every kind or nature (including without limitation attorney's fees, court costs, collection expenses, and litigation costs and expenses) which arise or result from or are related to

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(i) any claim for personal injury or property damage arising from any violation or lack of compliance by the Lessee after the Commencement Date of any Environmental Law, or any Environmental Condition or Hazardous Condition that comes into existence or occurs on the Premises after the Commencement Date, and/or (ii) any and all claims, demands, loss, cost, expense, damage, or liability sustained or incurred by the Lessor for the containment, cleanup, corrective action, remediation, removal, remedy, repair, response, addition or upgrade of equipment, site work, or abatement or every kind or nature arising from any Environmental Condition or Hazardous Condition in or on the Premises that comes into existence or occurs after the Commencement Date or any violation by the Lessee of any Environmental Law after the Commencement Date.

If the facts of any particular case demonstrate that both the Lessor and the Lessee have contributed to the Hazardous Condition or Environmental Condition or violation or lack of compliance with Environmental Law described in each of the two preceding paragraphs (hereinafter referred to as an "Environmental Event"), then the cost, expense, damage, or liability sustained or incurred for the containment, cleanup, corrective action, remediation, removal, remedy, repair, response, addition or upgrade of equipment, site work, or abatement of the Environmental Event shall be divided between and borne by the Lessee and the Lessor in proportion to the relative contribution of the Lessor and the Lessee to the causation of the Environmental Event.

IN WITNESS OF THE FOREGOING, the parties hereto have executed this Addendum Number Three on the dates set forth below.

Dated: 12/9/02

LESSEE NUPLA ACQUISITION CORPORATION

By [Signature]  
as President

By [Signature]  
as Secretary

Dated: 12/9/02

LESSOR CARMEN FAMILY 1991 TRUST

WELLS FARGO BANK NA, as Trustee

By [Signature]

Title: VICE PRESIDENT

[Signature]  
PHYLLIS S. CARMEN, as Trustee

[Signature]

Lot 1 of Tract 22682, in the city and county of Los Angeles, as per map recorded in Book 710 Pages 67 and 68 of Maps, in the office of the Recorder of said County, and the southeast 23 feet of Sheldon Street as dedicated on the map of said Tract 22682, with appurtenances and improvements thereon.

Exhibit A

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## AGREEMENT FOR EXTENSION OF LEASE

This is an agreement by and between Nupla Corporation, as Lessee, and the Carmien Family 1991 Trust, as Lessor, with respect to that certain Standard Industrial/Commercial Single-Tenant Lease-Net (the "Lease") covering property commonly known as 11912 Sheldon Street, Sun Valley, California, (the Property"). This Agreement for Extension of Lease is made and based upon the following Recitals:

### RECITALS

WHEREAS, Lessor and Lessee are parties to the Lease the term of which expires on May 31, 2005;

WHEREAS, Paragraph 51 of the Lease provides that the Lessee has an option to extend the term of the Lease (the "Option") for one additional sixty-month period commencing when the term expires, subject to a Cost of Living Adjustment in the Base Rent as provided in Section A.I.a. of Paragraph 51;

WHEREAS, Lessee has exercised the Option,

NOW, THEREFORE, Lessor and Lessee hereby agree as follows:

### AGREEMENT

1. The term of the Lease is extended for a period of sixty months beginning on June 1, 2005, and ending on May 31, 2010 (the "Extended Term").

2. The new monthly Base Rent for the Extended Term as calculated pursuant to Paragraph A.I.b. of Paragraph 51 of the Lease is and shall be \$ 25,672.50 per month *and each year thereafter*

3. All of the terms, conditions, and provisions of the Lease, except for the monthly Base Rent which is specified in Paragraph 2 above, shall apply to the Extended Term of the Lease.

IN WITNESS OF THE FOREGOING, Lessor and Lessee have dated and signed this Agreement for Extension of Lease as set forth below.

Date: 5/27/05

WELLS FARGO BANK, N.A., in its  
fiduciary capacity, as Co-Trustee  
of the Carmien Family 1991 Trust

By *Gloria J. Newmark*  
Title: Gloria J. Newmark  
Vice President

PHYLLIS S. CARMEN, in her fiduciary  
capacity, as Co-Trustee of the  
Carmien Family 1991 Trust

*Phyllis S. Carmien*

Date: 5/27/05

NUPLA CORPORATION

By *[Signature]*  
as President



Ms. Gloria J. Newmark, CPM, Vice President  
Wells Fargo  
Private Client Services – R/E  
100 E Thousand Oaks Blvd., #233 – MAC E2342-021  
Thousand Oaks, CA 91360

REC'D JUN 29 2005

**ASSET PURCHASE AGREEMENT**

**By and Among**

**NUPLA ACQUISITION CORPORATION**

**AND THE**

**CARMEN FAMILY 1991 TRUST**

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### EXHIBITS

### SCHEDULES

## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement ("Agreement") is made and entered into by and among, on the one hand, Nupla Acquisition Corporation, a California corporation, ("Purchaser"), and, on the other hand, the Trustees of the Carmien Family 1991 Trust for and on behalf of said Trust, which Trust is hereinafter referred to as the "Seller" or the "Shareholder." This Agreement is made and based on the following Recitals.

### RECITALS

WHEREAS, the Seller owns and controls all of the outstanding common stock and a majority of the outstanding preferred stock of Nupla Corporation, a Delaware corporation with operations in Sun Valley, California ("Nupla");

WHEREAS, Nupla designs, manufactures, markets, and sells industrial grade fiberglass handles and hand tools for the nonpowered hand tool industry; (the "Business");

WHEREAS, Sellers owns facilities at 11912 Sheldon Street, Sun Valley, California, in which Nupla conducts the Business (the "Nupla Facilities"), and leases said facilities to Nupla the "Facilities Lease");

WHEREAS, Seller owns certain of the assets used by Nupla in the Business (the "Shareholder Assets");

WHEREAS, Wells Fargo Bank NA and Phyllis S. Carmien are the Trustees of the Seller;

WHEREAS, the Purchaser desires to purchase the Business and the assets of Nupla (the "Nupla Assets") and for that purpose has entered into an Asset Purchase Agreement with Nupla (the Nupla APA") pursuant to which to purchase certain assets and assume certain liabilities of Nupla (the "Nupla Transaction");

WHEREAS, in connection with its purchase of the Business and the Nupla Assets, the Purchaser wishes to purchase from Seller the Shareholder Assets upon the terms and subject to the conditions of this Agreement;

WHEREAS, under the Nupla APA, the Purchaser will make a partial payment of the Purchase Price to Nupla by means of a promissory note (the "Nupla Promissory Note");

NOW, THEREFORE, in consideration of the mutual promises, agreements, terms, covenants, conditions, representations, and warranties that are set forth in this Agreement, the parties to this Agreement do hereby agree as follows:

## **AGREEMENT**

### **ARTICLE I PURCHASE AND SALE OF ASSETS**

**1.1 Purchase and Sale of Assets.** Upon the terms and subject to the conditions of this Agreement, the Seller agrees to bargain, sell, assign, transfer, convey and deliver, to the Purchaser, and the Purchaser agrees to purchase from the Seller, the assets specified in **Schedule A** (hereinafter referred to as the "Shareholder Assets") (which purchase and sale is hereinafter referred to as the "Trust Transaction"). At Closing, the Seller shall execute and deliver to Purchaser a Bill of Sale in the form attached as **Exhibit B** to this Agreement (the "Bill of Sale"). At Closing, the Shareholder Assets shall be, and shall be transferred, assigned, conveyed to, and shall be received by Purchaser, free and clear of any and all Liens (as defined below).

**1.2. Purchase Price.** Subject to offset and reduction as set forth below, the Purchase Price for the Shareholder Assets shall be Two Million One Hundred Thousand United States Dollars (\$2,100,000.00) which shall be paid in full at Closing.

**1.3 Shareholder Assets.** Except for the Facilities Lease and other Excluded Assets as set forth below, the Shareholder Assets are intended to and shall include any and all of the properties, assets, and rights owned by the Seller and used in the Business or kept, maintained, or located in or at the premises or facilities of Nupla of every kind and nature, tangible or intangible, fixed or contingent, including without limitation the following:

- (a) all machinery, equipment, tools, furnishings, or fixtures;
- (b) all intellectual property, including without limitation patents (including all reissues, divisions, continuations, and extensions of such patents), patent applications, patents pending, trademarks, servicemarks, trademark or servicemark registrations, trademark or servicemark registration applications, tradenames, all names and slogans used in or by the Business or the Seller, (including but not limited to the worldwide right, title, and interest of Seller to own and use the name "Nupla Corporation" or "Nupla," and all variations on such name or names and all derivations thereof and all other names under which the Seller has transacted the Business, sold products, or performed services in connection with the Business and all rights that the Seller has to prevent the use of such name or names by others), all inventions, technology, know-how, software, specifications, data, designs, trade secrets, processes, and confidential and proprietary information of every kind and nature, whether or not the same is subject to statutory registration (hereinafter referred to collectively as the "Intellectual Property");

(c) any and all other assets currently used in the Business or kept, maintained, or located in or at the premises or facilities of Nupla.

**1.4 Excluded Assets.** The term "Excluded Assets" means those certain assets listed below which are specifically excluded from the Shareholder Assets:

- (a) the books, records, and organizational documents of the Seller;
- (b) any and all assets not used in the Business or not located at any facilities of Nupla;
- and
- (c) the Facilities Lease and any real property owned by the Seller.

## **ARTICLE II ASSUMPTION OF LIABILITIES AND CONTRACTS**

(THIS ARTICLE IS INTENTIONALLY LEFT BLANK.)

## **ARTICLE III EFFECTIVE DATES**

### **3.1 Effective Date of this Agreement.**

This Agreement shall be and become effective when it has been signed by the Purchaser and by the Seller and when it has been delivered (i) by the Purchaser to the Seller and (ii) by the Seller to the Purchaser.

### **3.2 Effective Date of the Trust Transaction.**

The Trust Transaction shall be and become effective at 5:00 P. M. Pacific Time on the date of Closing.

## **ARTICLE IV REPRESENTATIONS, WARRANTIES, COVENANTS, AND AGREEMENTS OF SELLER**

The Seller does hereby represent, warrant, covenant, promise, and agree as follows:

### **4.1 Organization, Good Standing, and Power.**

Seller is a trust duly organized, validly existing and in good standing under the laws of the State of California and has all requisite power and authority to own the Shareholder Assets.

### **4.2 Authority, No Conflicts.**

The Seller has all requisite power and authority to execute this Agreement and all other agreements and documents contemplated hereby to be delivered by such party (the "Ancillary



Documents”), and to consummate the Trust Transaction. The execution and delivery of this Agreement and the Ancillary Documents by the Seller and the consummation by the Seller of the Trust Transaction have been duly authorized and approved. Except as set forth in **Exhibit D**, the execution and delivery of this Agreement and the consummation of the Trust Transaction do not and will not require the consent, approval, order or authorization of, or the registration, declaration or filing with, any court or other governmental or administrative agency, commission, authority, board, bureau, or instrumentality, whether federal, state, local or foreign (singularly, a “Governmental Entity”), or any individual, corporation, partnership, joint venture, business association or other entity (hereinafter, a “Person,” which term shall include a Governmental Entity). Seller has duly executed and delivered this Agreement, and this Agreement constitutes, and at Closing will constitute, a valid and binding obligation of the Seller enforceable in accordance with the terms and conditions of this Agreement. The execution and delivery of this Agreement and the Ancillary Documents by the Seller do not, and the consummation of the Trust Transaction will not, result in a material default (with or without notice or lapse of time or both) or give rise to any right of termination, cancellation, or acceleration, or result in the loss of a benefit or the breach any prohibition or restriction under any agreement, order, or judgment, or instrument by which the Seller is bound. The execution and delivery of this Agreement and the Ancillary Documents by the Seller do not, and the consummation of the Trust Transaction will not, violate or conflict with (a) any provision of the governing document of the Seller, (b) any mortgage, indenture, lease, agreement or other instrument or contract to which the Seller is a party or by which the Seller is bound, or (c) any federal, state, local or foreign law, rule, regulation, ordinance, judgment, writ, decree, or order that is applicable to the Seller or the Shareholder Assets.

#### **4.3 Trust Agreement and Trustees.**

The Trust is a trust duly created and validly existing by a Trust Agreement made under the laws of the State of California. The true and correct name of the Trust is “The Carmien Family 1991 Trust.” The authorized and acting trustees of the Trust as of the date hereof are, and on the Closing Date will be, Wells Fargo Bank NA and Phyllis S. Carmien. The Trust has the power and authority to own, and does own and will at Closing own, all of the outstanding common stock of Seller and a majority of the outstanding preferred stock of Seller. Neither of the Trustees has resigned or become incapacitated, and each of the Trustees is competent and authorized to act as a Trustee of the Trust. Neither of the Trustees is now, and at Closing will not be, in violation or default of any of the provisions of the Trust Agreement. The Trustees are authorized and empowered under the Trust Agreement and applicable law to sign and deliver to Purchaser this Agreement and all Ancillary Documents, and to consummate the Trust Transaction.

#### **4.4 Sufficiency of Shareholder Assets.**

The Shareholder Assets, together with the Nupla Assets and the Nupla Facilities, comprise all the properties and assets employed by Nupla in the operation of the Business. The Share-

holder Assets, together with the Nupla Assets and the Nupla Facilities, are all of the properties and assets that are reasonably necessary for the conduct of the Business.

#### **4.5 No Employees or Operations.**

The Seller does not have, and has not had, any employees. The Seller has not operated the Business.

#### **4.6 Compliance with Applicable Laws.**

With respect to the Shareholder Assets, the Seller has complied and is in compliance in all material respects with all laws, ordinances, regulations, rules, requirements and orders of all Governmental Entities applicable to the Seller, the Shareholder Assets, or the operation of the Business, and the Seller has not received any notice of any asserted violation of and has no other basis to believe it is not in compliance in all material respects with any such laws, ordinances, regulations, rules, requirements or orders. No investigation or review by any Governmental Entity with respect to the Seller or any of the Shareholder Assets is pending or has been threatened, nor has any Governmental Entity indicated an intention to conduct any such investigation or review. The Seller has filed with all proper authorities all statements and reports required by any law, regulation, licensing requirement, or orders to which the Seller is subject. The Seller possesses all licenses, franchises, permits and governmental authorizations necessary to utilize the Shareholder Assets in the conduct of the Business. All such licenses, franchises, permits and governmental authorizations may be and shall be transferred and assigned to Purchaser at Closing.

#### **4.7 Litigation.**

Except as set forth in **Schedule E**, there are no outstanding, pending, or threatened claims, suits, actions, investigations, grievances, proceedings, judgments, decrees, injunctions, or orders of any Governmental Entity, court, administrative or environmental agency, or arbitrator that (a) materially and adversely affects the Shareholder Assets or that could in the future materially and adversely affect the Shareholder Assets, or (b) seeks to enjoin or prohibit the Trust Transaction.

#### **4.8 Liabilities.**

The Seller has no liability or obligation or contract of any kind or nature (absolute, accrued, contingent, or otherwise) that may have a material adverse effect on the Shareholder Assets or the use or operation thereof by Purchaser after Closing.

#### **4.9 Free and Clear Title to Shareholder Assets, No Liens.**

The Seller has, and will have at Closing, and shall at Closing transfer, assign, and convey to Purchaser, and Purchaser shall receive at Closing, good, clear, and marketable title to all the Shareholder Assets free and clear of any and all Liens. For all purposes of this Agreement, the term "Liens" shall include (without limitation) any and all mortgages, claims, charges, liens,

security interests, pledges, restrictions, reservations, encumbrances, burdens, imperfections, or impairments of any and every nature or description with respect to the title of each of the Shareholder Assets.

#### **4.10 Ordinary Course of Business, Absence of Certain Changes.**

Since July 15, 2002, and through Closing, the Seller has managed the Shareholder Assets in the ordinary course and there has not been with respect to Shareholder Assets:

- (a) any change in the properties, assets, liabilities, business, or operations thereof which change by itself or in conjunction with all other such changes, whether or not arising in the ordinary course of business, has had or will have a material adverse effect on the Shareholder Assets or the use or application thereof by Purchaser after Closing;
- (b) any Lien placed on any of the Shareholder Assets;
- (c) any damage, destruction, or loss, whether or not covered by insurance, materially and adversely affecting the Shareholder Assets;
- (d) any amendment or change in the Trust Agreement of the Seller.

#### **4.11 The Schedules.**

Each and every one of the schedules described herein (including any and all subordinate schedules) is true, accurate, complete, and correct in all respects as of a date that is recent to the execution of this Agreement. At and as of Closing, the Seller shall have and shall deliver to the Purchaser the ownership, possession, custody, control, and the unrestricted use of and the right to use all of the assets and properties that are specified in **Schedule A**. All tangible property listed in **Schedule A**, including all machinery, equipment, furniture, fixtures, tools, computer equipment, and vehicles is and shall be at Closing in good condition and repair, normal wear and tear excepted. There will be at Closing no indebtedness owed by the Seller relating to any property specified in **Schedule A**. Together with the Nupla Assets, the tangible property included in the Shareholder Assets is all of the property or assets necessary for or used in the operation of the Business as heretofore conducted by Nupla.

#### **4.12 Intellectual Property Rights**

**Schedule A** shall include a full and complete list of the Seller's Intellectual Property Rights (as defined below and hereinafter referred to as the "IP Rights") that are used in the Business. At and as of Closing, the Seller shall own and have a valid right to use, sell, or license, and shall convey to Purchaser, all IP Rights. The IP Rights to use, sell or license are and at Closing shall be sufficient for the conduct of the Business. The execution, delivery and performance of this Agreement and the consummation of the Trust Transaction do not and will not constitute a breach of any instrument or agreement governing or affecting any IP Rights, do not and will not cause the forfeiture or termination or give rise to a right of forfeiture or termination of any IP Rights or impair the right to use, sell or license any IP Rights or any portion thereof. There is no royalty, honoraria, fee, or other payment payable to any person by reason of the ownership, use,

license, sale or disposition of any of the IP Rights. Neither the manufacture, marketing, license, sale or intended use of any product currently manufactured or sold by the Business or currently under development by the Business, or the provision of any service currently provided by the Business or currently planned to be provided by the Business, violates any license or agreement with any third party or infringes any intellectual property right of any other person or entity. There is no pending or threatened claim or litigation contesting the validity, ownership, or right to use, sell, license or dispose of any of the IP Rights nor is there any basis for any such claim, nor has the Seller received any notice asserting that any IP Right or the proposed use, sale, license, or disposition thereof conflicts, or will conflict, with the rights of any other person or entity, nor is there any basis for any such assertion. As used herein, the term "Intellectual Property Rights" means all worldwide industrial or intellectual property rights, including, without limitation, patents, patent applications, patents pending, patent rights, trademarks, trademark applications, trade names, service marks, service mark applications, internet domain names, internet or World Wide Web URLs or addresses, email addresses, copyright, copyright applications, franchises, licenses, technology, know-how, trade secrets, customer lists, proprietary processes and formulae, all source and object code, algorithms, architecture, structure, display screens, layouts, inventions, developments, tools and all documentation and media constituting, describing or relating to the above, including, without limitation, manuals, memoranda, computer disks, and records of every kind and nature.

#### **4.13 Environmental Matters.**

In connection with the Shareholder Assets up to and through Closing, (a) the Seller is in compliance with all applicable Environmental Laws (as defined herein) and has obtained and is in compliance with all permits, licenses and other authorizations required under any such Environmental Law for the use of the Shareholder Assets in the conduct of the Business; (b) there is no past or present event, condition or circumstance that is likely to interfere with the use of the Shareholder Assets in the conduct of the Business in the manner now conducted or which would interfere with the compliance with any Environmental Law or constitute a violation thereof; (c) the Seller has not leased, operated or owned any facilities in connection with the use of the Shareholder Assets in the Business with respect to which the Seller is subject to any actual or potential proceeding under any Environmental Law. Seller has received no notice from any Governmental Entity and is not aware of any pending or threatened action by any Governmental Entity or by or through any litigation that might in the future result in any judgment or order that would prohibit the use in the Business of any of the Shareholder Assets. For purposes of this Agreement, (a) "Environmental Law" shall mean any law, ordinance, regulation, rule, judgment, order, decree, permit, license, operating authorization or variance of any Governmental Entity relating to management of chemical substances, raw materials, products or wastes or pollution, protection or cleanup of the environment (including ambient air, surface water, groundwater, land surface or subsurface strata), including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), the Resource Conservation and

Recovery Act of 1976, as amended ("RCRA"), the Clean Water Act, the Clean Air Act, the analogous state statutes and other legal requirements relating to (i) releases, threats of releases, containment, removal, remediation, response, cleanup or abatement of a Hazardous Substance, (ii) the manufacture, generation, formulation, processing, labeling, distribution, use, treatment, handling, storage, recycling, disposal or transportation of a Hazardous Substance or (iii) the physical structure or condition of a building, facility, fixture or other structure, including, without limitation, those legal requirements relating to the use, handling, storage, disposal, cleanup or removal of asbestos, asbestos-containing materials, polychlorinated biphenyls, or any Hazardous Substance; (b) the term "Hazardous Substance" shall mean (i) any toxic substance, (ii) any "hazardous substance" within the meaning of Section 101(14) of CERCLA or any counterpart provision of any similar state or local law, (iii) any "pollutant or contaminant" within the meaning of Section 101(33) of CERCLA or any counterpart provision of any similar state or local law, or (iv) petroleum and petroleum products, including crude oil or any fraction thereof, natural gas, liquefied natural gas, and synthetic gas, (c) "Environmental Condition" shall mean any condition, event, circumstance, or situation resulting from any violation of any Environmental Law; and (d) "Hazardous Condition" shall mean any condition, event, circumstance, or situation that has been caused by or is the result of any Hazardous Substance whether in improvements, structures, surface water, groundwater, drinking water supply, land surface, subsurface strata, above-ground or underground tanks or other containers, or ambient air. If there is ever asserted any claim, demand, cause of action, litigation, or liability against the Purchaser for the alleged violation before Closing of any Environmental Law or related to any Hazardous Substance, or for any Environmental Condition or any Hazardous Condition that occurred or existed during any time prior to Closing, the Seller shall defend the same and shall pay any and all loss, cost, liability, or damage resulting therefrom or with respect thereto, including court costs, attorneys fees, and litigation expenses.

#### **4.14 Taxes.**

For the purposes of this Agreement, the terms "Tax" and "Taxes" include all federal, state, local and foreign income, gains, franchise, excise, property, sales, use, employment, license, payroll, occupation, recording, value-added, or transfer taxes, governmental charges, fees, levies or assessments (whether payable directly or by withholding), and, with respect to such taxes, any estimated tax, interest, penalties, or additions thereto. Except as set forth in Section 6.18 below, there are and will be at Closing no Taxes that are or will be payable by Purchaser on or with reference to the Shareholder Assets. The Seller shall pay or cause to be paid any and all Taxes of or resulting from the Business or based on the Shareholder Assets that accrued or were incurred prior to the Closing. The Seller has timely and correctly filed all tax returns required to be filed by the Seller with respect to the Shareholder Assets and has paid or provided for all Taxes shown to be due on such returns. No action or proceeding for the assessment or collection of any Taxes is pending against the Seller. No deficiency, assessment or other claim for any Taxes has been asserted or made against the Seller or the Shareholder Assets. No issue has been raised by any

taxing authority in connection with an audit or examination of any Taxes of the Seller. No tax returns of the Seller have been examined and there are no outstanding agreements or waivers extending the applicable statutory periods of limitation for Taxes for any period. All Taxes that the Seller has been required to collect or withhold have been duly collected or withheld and, to the extent required, have been paid to the proper taxing authority.

#### **4.15 Insurance**

The Seller maintains, and shall maintain until Closing, adequate liability and casualty insurance on the Shareholder Assets.

#### **4.16 Document Examination and Delivery.**

The Seller shall make available to Purchaser and its agents for examination and shall deliver to Purchaser at Closing all information and documents with respect to the original purchase, ownership, maintenance, and condition of the Shareholder Assets.

#### **4.17 Full Disclosure.**

All of the information contained in this Agreement, the Ancillary Documents, the Exhibits and Schedules, and provided by the Seller to the Purchaser prior to Closing is full, true, complete, and accurate. Neither this Agreement, the Ancillary Documents, the Exhibits, or Schedules to this Agreement, nor any of the other information relevant to the Trust Transaction delivered by the Seller to Purchaser, taken together, contains or will contain any untrue statement of a material fact or omits or will omit to state any fact necessary in order to make the statements contained herein and therein, in light of the circumstances under which such statements are made, not misleading.

### **ARTICLE V REPRESENTATIONS, WARRANTIES, COVENANTS, AND AGREEMENTS OF PURCHASER**

Purchaser does hereby represent, warrant, covenant, promise, and agree as follows:

#### **5.1 Organization, Good Standing and Power.**

Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of California and has all requisite power and authority to own the its assets and to carry on its business. Purchaser has delivered to the Purchaser true and complete copies of its articles of incorporation as amended to the date of this Agreement. Purchaser has no subsidiaries.

#### **5.2 Authority, No Conflicts**

Purchaser has all requisite power and authority to execute this Agreement and all other agreements and documents contemplated hereby to be delivered by such party (the "Ancillary Docu-



ments”), and to consummate the Trust Transaction. The execution and delivery of this Agreement and the Ancillary Documents by Purchaser and the consummation by the Purchaser of the Trust Transaction have been duly authorized and approved by the board of directors of the Purchaser. The execution and delivery of this Agreement and the consummation of the Trust Transaction by Purchaser do not and will not require the consent, approval, order or authorization of, or the registration, declaration or filing with, any court, governmental or administrative agency, commission, authority, board, bureau, or instrumentality, whether federal, state, local or foreign (singularly, a “Governmental Entity”), or any individual, corporation, partnership, joint venture, business association or other entity (hereinafter, a “Person,” which term shall include a Governmental Entity). Purchaser has duly executed and delivered this Agreement, and this Agreement constitutes, and at Closing will constitute, a valid and binding obligation of the Purchaser enforceable in accordance with the terms and conditions of this Agreement. The execution and delivery of this Agreement and the Ancillary Documents by the Purchaser does not, and the consummation of the Trust Transaction will not, result in a material default (with or without notice or lapse of time or both) or give rise to any right of termination, cancellation, or acceleration, or result in the loss of a benefit or the breach any prohibition or restriction under any agreement, order, or judgment, or instrument by which the Purchaser is bound. The execution and delivery of this Agreement and the Ancillary Documents by the Purchaser does not, and the consummation of the Trust Transaction will not, violate or conflict with (a) any provision of the Certificate of Incorporation, bylaws, or other governing document of the Purchaser, (b) any mortgage, indenture, lease, agreement or other instrument or contract to which the Purchaser is a party or by which the Purchaser is bound, or (c) any federal, state, local or foreign law, rule, regulation, ordinance, judgment, writ, decree, or order that is applicable to the Purchaser.

## **ARTICLE VI**

### **ADDITIONAL COVENANTS AND AGREEMENTS**

#### **6.1 Advice of Changes.**

From July 15, 2002 (the date a Letter of Intent by and among the parties was executed) until the earlier of the Closing or the termination of this Agreement, the Seller shall promptly advise Purchaser in writing (a) of any event that would render any representation or warranty of the Seller contained in this Agreement untrue or inaccurate in any material respect and (b) of any material adverse change in the Shareholder Assets.

#### **6.2 Maintenance of the Shareholder Assets**

From July 15, 2002, until the earlier of the Closing or the termination of this Agreement, the Seller will use its best efforts to carry on and preserve the Shareholder Assets in substantially the same manner as it has prior to said date. If at any time before Closing or termination, the Seller becomes aware of any material deterioration in the Shareholder Assets, it will promptly inform Purchaser in writing.

### **6.3 Conduct of the Shareholder Assets**

From July 15, 2002, until the earlier of the Closing or the termination of this Agreement, the Seller shall conduct its business with respect to the Shareholder Assets in the ordinary and usual course and shall not, without the prior written consent of Purchaser:

- (a) encumber or permit to be encumbered any of the Shareholder Assets;
- (b) amend or terminate any contract, agreement, lease, or license which pertains to the Shareholder Assets; except those amended or terminated in the ordinary course of business consistent with past practice, and which are not material in amount or effect;
- (c) dispose of any of the Shareholder Assets except in the ordinary course of business;
- (d) change accounting methods, policies, or procedures;
- (e) amend its Trust Agreement;
- (f) license any of its technology or Intellectual Property Rights;
- (g) change or terminate any insurance coverage on the Shareholder Assets;
- (h) take or fail to take any action which would cause a representation or warranty of the Seller in this Agreement to become untrue or inaccurate in any material respect.
- (i) fail to maintain the Shareholder Assets in good working condition and repair, subject only to ordinary wear and tear;
- (j) fail to pay the premiums for and maintain in full force and effect all of its insurance policies covering the Shareholder Assets.

### **6.4 Regulatory and Court Approvals.**

Purchaser and Seller will cooperate to execute and file, or join in the execution and filing, and will use their best efforts to obtain, any authorization, approval or consent of any court, governmental body, federal, state, local or foreign, that may be reasonably required for the consummation of the Trust Transaction, including the court approval described in Exhibit D.

### **6.5 Notification of Litigation.**

The Seller will notify Purchaser in writing promptly after learning of any material actions, suits, proceedings, or investigations by or before any court, board, or Governmental Agency, initiated by or against it, or known by it to be threatened against it concerning the Shareholder Assets.

### **6.6 No Other Negotiations or Agreements by Seller.**

From July 15, 2002, until the earlier of termination of this Agreement or the Closing, the Seller shall not, directly or indirectly, solicit, initiate, accept, or encourage any offer from any person or entity or consider any inquiries or proposals received from any other person or entity, or participate in any negotiations or discussions regarding, furnish to any person or entity any information with respect to, or enter into any agreement, commitment, letter of intent or understanding concerning, the possible disposition of all or any substantial portion of the Shareholder Assets in any way except pursuant to the Trust Transaction. The Seller shall promptly notify

Purchaser orally and in writing of any such inquiry or proposal, including the name of the persons soliciting, receiving, and making such proposal and all of the terms thereof.

#### **6.7 Access to Information.**

From July 15, 2002, until the earlier of termination of this Agreement or the Closing, the Seller shall allow and permit Purchaser and its agents reasonable access the files, books, records, offices, and facilities of the Seller for the purpose of Purchaser's due diligence investigation of the Shareholder Assets.

#### **6.8 Best Efforts to Satisfy Conditions Precedent.**

From July 15, 2002, until the earlier of termination of this Agreement or the Closing, Purchaser and Seller will each use its best efforts to satisfy or cause to be satisfied all the conditions precedent that are set forth below, and to cause the Trust Transaction to be consummated.

#### **6.9 Further Assurances.**

Both before and after Closing, the Seller and the Purchaser shall cooperate and shall each deliver or cause to be delivered to the other, at such times and places as shall be reasonably necessary or appropriate, such additional documents, instruments, pleadings, or agreements, and take such additional actions as can be taken without unreasonable expense, as may be reasonably necessary or appropriate for the purpose of carrying out this Agreement and consummating the Trust Transaction.

#### **6.10 Release of Liens.**

At or prior to Closing, the Seller shall obtain a release of all Liens which pertain to any of the Shareholder Assets, and shall deliver to the Purchaser at Closing all required or appropriate Uniform Commercial Code Termination Statements reflecting said release of Liens.

#### **6.11 Risk of Loss.**

Before Closing is fully and completely accomplished, any loss of or damage to any of the Shareholder Assets from fire, flood, earthquake, war, revolution, or any other casualty or occurrence shall be entirely at the risk and responsibility of the Seller. The risk of loss to the Shareholder Assets shall pass to the Purchaser only after Closing has been completely accomplished.

#### **6.12 New Lease of Nupla Facilities.**

At and as a part of Closing, the Seller and the Shareholder shall terminate the Facilities Lease, and the Shareholder and Purchaser shall enter into a new lease of said facilities substantially in the form attached as **Exhibit K** to the Nupla APA.

#### **6.13 Brokers or Finders Fees or Commissions.**

The Seller represents that no agent, broker, investment banker or other firm or Person is or will be entitled to any broker's or finder's fee or any other commission or similar fee in connection with the Trust Transaction. The Seller agrees to indemnify and hold the Purchaser harmless from and against any and all claims, liabilities, or obligations with respect to any such fees, commissions, or expenses asserted by any Person on the basis of any agreement, act or statement alleged to have been made by the Seller in connection with this Agreement and the Trust Transaction. Purchaser agrees to indemnify and hold the Seller harmless from and against any and all claims, liabilities, or obligations with respect to any such fees, commissions or expenses asserted by any Person on the basis of any act or statement or agreement alleged to have been made by Purchaser in connection with this Agreement and the Trust Transaction.

#### **6.14 Accounting Terms.**

Accounting terms not otherwise defined in this Agreement are to be defined in accordance with Generally Accepted Accounting Principles (GAAP).

#### **6.15 Agreements Not to Compete**

The Seller agrees that for a period of five (5) years following the Closing, it shall not, directly or indirectly (i) own, manage, engage in, be connected with, or represent in any way, any business that is competitive with the Business, or (ii) solicit any business from any of the customers of the Business. The Seller agrees that after Closing, it will not at any time communicate or divulge any secret or confidential information, knowledge, or data related to the Business to any Person other than the Purchaser. The Seller shall hold all such knowledge, information, or data relating to the Business in a fiduciary capacity for the benefit of the Purchaser.

#### **6.16 Bulk Sales Law and Seller Liabilities.**

The Purchaser and the Seller understand and agree that the sale of the Shareholder Assets by the Seller to the Purchaser in accordance with this Agreement does not require compliance with the provisions of the bulk sale law or bulk transfer law of the State of California as set forth in Section 6101 *et seq.* of the California Uniform Commercial Code. In connection with this understanding, Seller agrees that Seller shall pay and fully discharge any and all liabilities of every kind and nature that are or were the liabilities of Seller.

#### **6.17 Allocation of Purchase Price.**

Schedule N is an agreed allocation of the Purchase Price for the Shareholder Assets and the foregoing agreement not to compete. The Purchaser and the Seller agree to prepare their respective tax returns with respect to the sale of the Shareholder Assets in a manner that is consistent with the said allocation.

#### **6.18 Sales Tax.**

Sales tax in the State of California or some other governmental jurisdiction may become due and payable as a result of the Nupla Transaction and/or as a result of the Trust Transaction. If any such sales tax does become due and payable in the State of California or any other governmental jurisdiction as a result of the Nupla Transaction and/or as a result of the Trust Transaction, then the Seller shall report and pay any and all such sales tax or taxes. When Seller has completed said sales tax report or reports, Seller shall deliver a copy thereof to the Purchaser. Prior to the time that Seller must pay the aforesaid sales taxes, Purchaser shall reimburse the Seller for the payment of such sales tax or taxes in an amount not to exceed in the aggregate for both the Nupla Transaction and the Trust Transaction the sum of \$100,000.00.

#### **6.19 Court Approval**

At its or their own cost and expense, Seller shall apply for and obtain the court order approving or consenting to the Trust Transaction that is described in **Exhibit D** hereto.

#### **6.20 Survival of Representations.**

(a) The representations, warranties, covenants and agreements of Purchaser that are contained in this Agreement shall remain operative and in full force and effect through and shall expire upon the three-year anniversary of Closing.

(b) The representations, warranties, covenants and agreements of the Seller that are contained in this Agreement shall remain operative and in full force and effect until the three-year anniversary of Closing.

#### **6.21 Updated Schedules.**

The parties hereto agree that the Schedules referred to herein are a material and integrated part of this Agreement. However, because the Schedules are voluminous, said Schedules are not bound together with this Agreement, but are bound together as separate group or documents, records, and papers. The parties hereto also agree that this Agreement cannot be consummated on the basis of the Schedules that are available at the date of execution of this Agreement. Therefore, on the date of Closing, Seller and Shareholder shall deliver to Purchaser updated Schedules (hereinafter referred to as the "Updated Schedules") which shall include each and every Schedule that is described in this Agreement, each of which shall be updated and brought forward with and include all of the information applicable thereto as defined herein for the period through the close of business on the date immediately preceding the date of Closing. At and as of Closing each of the Updated Schedules shall be true, accurate, complete, and correct in all respects as of the close of business of the date immediately preceding the date of Closing. At Closing, Purchaser shall have the right to examine each and every one of the Updated Schedules and to approve or disapprove any one or more of the Updated Schedules, provided, however, the disapproval of any of the Updated Schedules by the Purchaser shall be reasonable and shall be made in good faith.

**ARTICLE VII**  
**BREACH OF AGREEMENT, INDEMNIFICATION, AND REMEDIES**

**7.1 Definitions.**

(a) For the purposes of this Article VII, (i) the term "this Agreement" shall mean and include this Agreement, the Exhibits and Schedules hereof or herewith, the Ancillary Documents, and any and all other bills of sale, certificates, documents, or instruments delivered pursuant to this Agreement, and (ii) the term "Trust APA" shall mean and include the Trust APA, the Exhibits and Schedules thereof or therewith, the Ancillary Documents, and any and all other bills of sale, certificates, documents, or instruments delivered pursuant to the Trust APA.

(b) Damages under this Article VII of this Agreement shall be cumulated and combined with Damages arising under the Trust APA and, for the purposes of this Article VII, the term "De Minimus Damages" shall mean Damages from any and all sources arising under this Agreement and/or the Trust APA (except for damages resulting from the Contract Employee Indemnity) not exceeding in the aggregate the total amount of \$50,000.00.

(c) For purposes of this Agreement, a "Third-Party Claim" is defined to mean a claim against one of the parties hereto by a party other than one of the parties to this Agreement, which claim is based, in whole or in part, upon the contract, agreement, act, or omission of one or more of the other parties to this Agreement.

(d) For purposes of this Agreement, (i) the term "Damage" or "Damages" (except for damages resulting from the Contract Employee Indemnity) shall mean any and all claims, demands, actions, losses, costs, damages, liabilities, fines, settlement amounts, and litigation or defense expenses of every kind and nature, including, without limitation, court costs and attorneys fees, (ii) Damages that are due from a party may be paid directly by that party or by that party's insurance carrier, and (iii) Damages may be mitigated by a party against whom a Claim is made by that party's assuming and defending, and paying any Damages or settlement with respect to, a Third-Party Claim.

(e) If a party is from time to time entitled to any Damages under this Section VII, (not including any amounts payable to the Purchaser by the Seller and/or the Shareholder as the special Contract Employee Indemnity pursuant to Section 6.12(b) above, which Contract Employee Indemnity is separate from and independent in all respects of and from and not subject to this Article VII), the aggregate amount of any and all of said Damages shall be considered and applied in order (i) first as and to De Minimus Damages, (ii) next, if applicable, as and to Damages to be recovered from the Nupla Promissory Note, and, (iii) finally, Damages that are recoverable directly from the party or parties liable therefor.

(f) Damages under this Article VII of this Agreement may be cumulated and combined with Damages arising under the Nupla APA, PROVIDED, HOWEVER, Damages under this Agreement and/or the Nupla APA shall not exceed in the aggregate the sum of \$5,450,000 (the "Maximum Damages"). The Maximum Damages do not include or reflect De Minimus Damages.

(g) For purposes of this Article VII, each indemnified party shall include its respective officers, directors, employees, stockholders, agents, attorneys, accountants, representatives, and affiliates, and the officers, directors, employees, stockholders, agents, attorneys, accountants, and representatives of said affiliates.

## **7.2 Damages for Breach of this Agreement.**

Any party or parties who breaches any provision of this Agreement or the Nupla APA, or who makes in this Agreement or the Nupla APA any false, inaccurate, or untrue statement, warranty, or representation, shall be liable to the other party or parties for all Damages (in excess of De Minimus Damages incurred from any and all sources but not exceeding the Maximum Damages) incurred as a result thereof as permitted or allowed at law or in equity or pursuant to this Agreement.

## **7.3 Indemnification of the Seller and the Shareholder by Purchaser.**

Purchaser hereby agrees to indemnify and hold harmless the Seller from and against any and all Damages (in excess of De Minimus Damages incurred from any and all sources but not exceeding the Maximum Damages) incurred by the Seller as a result of or arising out of any false, inaccurate, or untrue warranty, statement, or representation made by Purchaser in this Agreement or the Nupla APA, or any breach of, or default in the performance of, any promise, covenant, or agreement of the Purchaser contained in this Agreement or in the Nupla APA, or arising from any Third Party Claim.

## **7.4 Indemnification of Purchaser by the Seller and the Shareholder.**

(a) If Purchaser is entitled to Damages or indemnity under or pursuant to Section 7.2 or Section 7.4 above against either or both of Seller or Shareholder as established under the procedures described in Paragraphs 7.6 through 7.9 below, and/or if Purchaser is entitled to Damages or indemnity under or pursuant to Section 7.2 or 7.4 of the Trust APA against the Shareholder (referred to as "Seller" in said Trust APA) as established under the procedures described in Paragraphs 7.6 through 7.9 below, then, in addition to all other remedies that Purchaser may have, Purchaser may at its sole and exclusive election offset any or all of such Damages or indemnity against money owed to Seller under the Nupla Promissory Note.

(b) The foregoing indemnity includes (without limitation) liability to the Purchaser by the Seller and/or the Shareholder for, among other things, Unrealized Assets or Undisclosed Liabilities. The term "Unrealized Assets" shall mean assets or properties or inventory or accounts receivable or other assets that are listed in Schedule A that are not actually delivered to and received by the Purchaser at Closing. The term "Undisclosed Liabilities" shall mean liabilities or contracts of the Seller that are paid or performed by the Purchaser.

(c) The foregoing indemnity includes (without limitation) (i) any claim for personal injury or property damage arising from any pre-Closing Environmental Condition or Hazardous Condition or any pre-Closing violation of any Environmental Law or (ii) any liability sustained or incurred



by the Purchaser for the containment, corrective action, removal, remedy, cleanup, response or abatement arising from any pre-Closing Environmental Condition or Hazardous Condition or any pre-Closing violation of any Environmental Law.

(d) The foregoing indemnity includes (without limitation) any claim against the Purchaser by any person who claims to be a legal or beneficial owner of common or preferred stock of Nupla or a trustee or beneficiary of the Trust.

(e) The Seller's obligations pursuant to this Section 7.4 shall be enforceable notwithstanding any disclosure prior to Closing.

(f) The foregoing indemnity is intended to and does implement the principle that the Seller shall be and is responsible, obligated, and liable for, and shall pay for, any and all expenses, costs, damages or liabilities that were incurred as a result of any contract, agreement, act, or omission by the Seller before Closing, and the Purchaser shall be and is responsible, obligated, and liable for, and shall pay for, any and all costs, expenses, damages or liabilities that are incurred as a result of any contract, agreement, act, or omission by the Purchaser after Closing.

#### **7.5 Purchaser's Recovery from the Nupla Promissory Note.**

(a) If Purchaser is entitled to Damages or indemnity under or pursuant to Section 7.2 or Section 7.4 above against either or both of Seller or Shareholder as established under the procedures described in Paragraphs 7.6 through 7.9 below, and/or if Purchaser is entitled to Damages or indemnity under or pursuant to Section 7.2 or 7.4 of the Trust APA against the Shareholder (referred to as "Seller" in said Trust APA) as established under the procedures described in Paragraphs 7.6 through 7.9 below, then, after Damages due to Purchaser from the Seller and/or the Shareholder have in the aggregate exhausted and consumed the amount of De Minimus Damages, in addition to any and all other remedies that Purchaser may have, before Purchaser recovers Damages directly from the Seller and/or the Shareholder, Purchaser shall offset any or all of Damages or indemnity against money owed to Seller under the Nupla Promissory Note.

(b) If any such offset is made by Purchaser against the Nupla Promissory Note, the offset shall be applied against the Principal Sum of said promissory note and said Principal Sum shall be reduced by the amount of such offset as of the date of Closing. In that case, the interest payable on the Nupla Promissory Note shall be recalculated from the date of Closing based upon the revised amount of the Principal Sum (the "Recalculation of Interest").

c) If as a result of any or all of the Recalculation(s) of Interest, the Purchaser has paid interest on the Promissory Note in excess of the interest actually due thereon as computed by the Recalculation of Interest (the "Overpaid Interest"), then the Purchaser shall be entitled to recover the amount of the Overpaid Interest from interest or principle to be paid on the Promissory Note in the future, and, in order to do so, the Purchaser may withhold from any or all subsequent quarterly payments of interest or the payment of the Principal Sum on the Maturity Date the amount or amounts of any or all Overpaid Interest.

#### **7.6 Notice of Claim for Indemnity.**

As used herein, the term "Claim" shall mean a claim for Damages or indemnification by the Seller or the Purchaser under Section 7.2, 7.3, or 7.4 above. A Claim may be made for a breach of a promise, agreement, covenant, representation, or warranty of this Agreement by a party, or as a result of a Third-Party Claim. Except as set forth in Section 7.5 above, after Closing, when a party becomes aware that it has or may have a Claim against another party for Damages or indemnity, the party making the Claim ("Claimant") shall give written Notice of Claim to the party against which the Claim is made. Said Notice of Claim shall describe the Claim, the amount thereof, the basis therefor, and shall make a demand for the other party to pay or defend the Claim forthwith.

#### **7.7 Response to Notice of Claim.**

Within twenty-one days after receiving a Notice of Claim, the party that received such Notice ("Recipient") shall reply and respond in writing to the party that gave the Notice of Claim. Said response shall state whether or not the Recipient agrees to the Claim and, if the party does not agree to the Claim, the reasons therefor. In so responding, the Recipient may deny the Claim in whole or in part, may agree to defend a Third-Party Claim in whole or in part with or without a reservation of rights, may refer a Third-Party Claim to an insurance carrier for defense and liability, or may agree to the Claim in whole or in part. If the Recipient fails to respond to a Claim within forty-five days after receiving a Notice of Claim, then the Recipient defaults, which default consents and agrees to the Claim in whole and said party thereby agrees to pay the entire amount of the Claim.

#### **7.8 Resolution Period and Consequences of Failure to Agree.**

When the Recipient timely responds to the Notice of Claim and denies the Claim in whole or in part, the parties have sixty days after the date of said Notice of Claim in which entirely to resolve the Claim (the "Resolution Period"). The period of time for the Resolution Period may be extended by the mutual written agreement of the parties. If a Claim is referred by a party to an insurance carrier, then the Resolution Period shall be suspended until the insurance carrier either agrees to pay the Claim or denies the Claim, but not for a period of time longer than 180 days. During the Resolution Period, the parties may negotiate directly with each other concerning the Claim or, at the written request of one party, the parties shall mediate the Claim. In mediation, the parties shall agree upon the selection of a mediator, and (a) the Purchaser and (b) the Seller and/or the Trust shall each pay one-half of the mediator's charges and fees. If within the Resolution Period the parties fail to resolve the Claim by mediation or otherwise, then any party may take whatever action that it may deem appropriate in the circumstances, including litigation, in order to resolve the entirety of the Claim.

### **7.9 Actions while Third-Party Claim is Pending.**

The Claimant, or the Recipient if it and the Claimant so agree, shall be entitled, while said Claim is pending, to take such reasonable actions as may be necessary or appropriate to defend a Third-Party Claim. If the Claimant provides such defense, the costs of such defense shall become a part of the Claim of the Claimant subject to reimbursement and indemnification by the Recipient. Pending the resolution of a Third-Party Claim, the party that defends the Third-Party Claim shall not settle or compromise the Third-Party Claim without the prior written consent of the other party.

## **ARTICLE VIII CONDITIONS PRECEDENT TO CLOSING BY THE SELLER**

The obligations of the Seller to consummate the Trust Transaction are subject to the satisfaction of the following conditions precedent, or the waiver thereof:

### **8.1 Authorizations.**

All authorizations, consents, orders, or approvals of, or declarations or filings with, or expirations of waiting periods imposed by, any Governmental Entity necessary for the consummation of the Trust Transaction, including the court approval described in Section 6.19 above, shall have been obtained or filed or shall have occurred.

### **8.2 Representations and Warranties of Purchaser.**

The representations and warranties of the Purchaser set forth in this Agreement shall be true and correct in all material respects as of the date of Closing.

### **8.3 Performance of Pre-Closing Obligations of the Purchaser.**

The Purchaser shall have performed all obligations required to be performed by it under this Agreement prior to Closing.

### **8.4 Deliveries by the Purchaser at Closing.**

All of the agreements, opinions, documents, instruments, and other deliveries to be made by the Purchaser at the Closing shall have been tendered.

### **8.5 Acceptance of Documents by the Seller's and Shareholder's Counsel.**

The form and substance of all legal documents required under this Agreement shall be reasonably acceptable to counsel to the Seller.

### **8.6 No Prohibitions.**

No temporary restraining order, preliminary or permanent injunction, or other legal restraint or prohibition preventing the consummation of the Trust Transaction shall be in effect. No action

or proceeding shall be pending before or by a court or any other Governmental Entity which threatens to restrain or prohibit the consummation of the Trust Transaction.

**8.7 Opinion of Counsel of Purchaser.**

Seller shall have received the opinion of counsel for Purchaser dated as of the date of Closing substantially in the form of **Exhibit H** attached hereto.

**ARTICLE IX**  
**CONDITIONS PRECEDENT TO CLOSING BY THE PURCHASER**

The obligations of the Purchaser to consummate the Trust Transaction are subject to the satisfaction of the following conditions precedent, or the waiver thereof:

**9.1 Authorizations.**

All authorizations, consents, orders, or approvals of, or declarations or filings with, or expirations of waiting periods imposed by, any Governmental Entity necessary for the consummation of the Trust Transaction, including the court approval described in Section 6.24 above, shall have been obtained or filed or shall have occurred.

**9.2 Representations and Warranties of Seller.**

The representations and warranties of the Seller set forth in this Agreement shall be true and correct in all material respects as of the date of Closing.

**9.3 Performance of Pre-Closing Obligations of the Seller.**

The Seller shall have performed all obligations required to be performed by it under this Agreement prior to Closing.

**9.4 Deliveries by the Seller at Closing.**

All of the agreements, opinions, documents, instruments, and other deliveries to be made by the Seller at the Closing shall have been tendered.

**9.5 Acceptance of Documents by the Purchaser's Counsel.**

The form and substance of all legal documents required under this Agreement shall be reasonably acceptable to counsel to the Purchaser.

**9.6 No Prohibitions.**

No temporary restraining order, preliminary or permanent injunction, or other legal restraint or prohibition preventing the consummation of the Trust Transaction shall be in effect. No action or proceeding shall be pending before or by a court or any other Governmental Entity which threatens to restrain or prohibit the consummation of the Trust Transaction.

**9.7 No Material Adverse Changes.**

Since July 15, 2002, no event or circumstance shall have occurred which has had or may have a material adverse effect on the Shareholder Assets.

**9.8 Satisfaction of Purchaser with Due Diligence Investigation.**

In its sole and exclusive discretion, Purchaser shall be satisfied with the results of its due diligence investigation of the Business and with each and every Exhibit and Schedule as set forth herein.

**9.9 Purchaser's Financing.**

Purchaser shall have received capitalization and bank or other financing which, in its sole and exclusive discretion, is satisfactory to it by means of which to consummate the Nupla Transaction.

**9.10 Lease of Nupla Facilities.**

The Shareholder and the Purchaser shall have entered into a new lease of the Nupla Facilities substantially in the form and content as set forth in Exhibit K attached to the Nupla APA.

**9.11 Permits in Force.**

All Permits required for the lawful operation of the Shareholder Assets in the Business shall have been obtained by the Purchaser and shall be in full force and effect.

**9.12 Nupla Transaction.**

The Nupla Transaction shall be consummated simultaneously with Closing.

**9.13 Opinion of Counsel of Shareholder and Seller.**

Purchaser shall have received the opinion of counsel to the Seller dated as of the date of Closing, substantially in the form of Exhibit E attached hereto.

**9.14 No Disapproval of Updated Schedules.**

The Purchaser shall not have disapproved of any of the Updated Schedules in accordance with the provisions of Section 6.21 above.

**ARTICLE X  
CLOSING**

**10.1 Date, Time, and Place of Closing.**

The parties hereto shall consummate the Trust Transaction ("Closing") at 10:00 A.M. on Monday, December 9, 2002, at a place to be designated by Purchaser or at such other date, time and place as Purchaser and the Seller shall agree. Subject to the satisfaction of all the Conditions

Precedent to Closing specified in Articles VIII and IX above, at and as of Closing, the parties shall consummate the Trust Transaction as follows:

#### **10.2 Deliveries of Seller to Purchaser.**

The Seller shall deliver or cause to be delivered to the Purchaser at Closing:

(a) The ownership, possession, custody, control and the unrestricted right to have and to use each and all of the assets and properties that are the Acquired Assets.

(b) The fully executed Bill of Sale in the form and content as set forth in **Exhibit B**.

(c) The executed Opinion of Counsel in the form and content as set forth in **Exhibit E**.

(d) The fully executed Closing Certificate of the Seller and Shareholder in the form and content as set forth in **Exhibit F**.

(e) The originals of all certificates of title, free and clear of any debts, liens, or security interests, to any vehicles included in the Acquired Assets together with appropriate assignments of title to such vehicles and other documents necessary for the transfer of any vehicles to the Purchaser, executed by the Seller.

(f) Assignments of all patents, patents pending, patent applications, trademarks, trademarks pending, or trademark applications duly executed by all necessary parties for filing with the United States Patent and Trademark Office.

(g) The Updated Schedules, none of which shall have been disapproved by the Purchaser in accordance with the provisions of Section 6.21 above.

(h) Evidence reasonably satisfactory to Purchaser that any and all Liens on the Shareholder Assets have been released.

(i) A fully executed new lease of the Nupla Facilities substantially in the form and content as set forth in **Exhibit K** to the Nupla APA.

(j) A certified copy of the court order described in Section 6.24 above.

(k) Such other consents, approvals, or other documents as the Purchaser or its counsel may reasonably request.

(l) Such other consents, approvals, or other documents as the Purchaser or its counsel shall reasonably request.

#### **10.3 Deliveries of Purchaser to Seller.**

In consideration for the items delivered to the Purchaser by the Seller and the Shareholder, at and for Closing, the Purchaser shall deliver or cause to be delivered to the Seller:

(a) The Purchase Price by means of wire transfer to an account to be designated by the Seller.

(b) The fully executed Closing Certificate of Purchaser in the form and content as set forth in **Exhibit G**.

(c) The fully executed Opinion of Counsel for Purchaser in the form and content as set forth in **Exhibit H**.

(d) A fully executed new lease of the Nupla Facilities substantially in the form and content as set forth in Exhibit K to the Nupla APA.

## ARTICLE XI CONFIDENTIALITY AND PUBLICITY

### 11.1 Confidentiality.

The Seller and Purchaser each recognize that they have received and will receive confidential information concerning the other during the course of the negotiations and preparations of or for this Agreement and the Trust Transaction. Accordingly, each of the Seller and Purchaser agree (a) to use their respective best efforts to prevent the unauthorized disclosure of any confidential information concerning the other that was or is disclosed during the course of such negotiations and preparations, and is clearly designated in writing as confidential at the time of disclosure, and (b) to not make use of or permit to be used any such confidential information other than for the purpose of effectuating the Closing of the Trust Transaction. The obligations of this Article X shall not apply to information that is required, in the opinion of counsel to a party hereto, to be disclosed by statute, or governmental rule or regulation, or, following the Closing, to the disclosure of information regarding the Seller by Purchaser. If this Agreement is terminated, all copies of documents containing confidential information shall be returned by the receiving party to the disclosing party. Because of the difficulty of measuring economic losses as a result of the breach of this provision, and because of the immediate and irreparable damage that would be caused for which they would have no other adequate remedy, the parties hereto agree that, in the event of a breach by any of them of the foregoing covenants, the covenants may be enforced against the other parties by injunctions and restraining orders. The parties acknowledge that the disclosure of the pendency of the Trust Transactions to certain of the agents of the Seller, and to the legal, accounting and other professional advisors of the parties is necessary and appropriate, provided that such disclosure is accompanied by appropriate cautions regarding the confidentiality of such information.

**11.2 Publicity.** Except for seeking and obtaining the approval of the Trust Transaction by any necessary court, neither the Seller nor the Purchaser shall issue or cause the publication of any press release or other public announcement with respect to the Trust Transaction without the consent of the other party hereto, which consent shall not be unreasonably withheld, PROVIDED, HOWEVER, after Closing, Purchaser or affiliates of Purchaser may issue press releases or make public announcements of the Trust Transaction without details with respect to the specific terms and conditions of the Trust Transaction.



## ARTICLE XII NOTICES

### 12.1 Methods of Notice.

All notices and other communications required or permitted hereunder shall be effective upon receipt (or refusal of receipt) and shall be in writing and delivered by hand delivery or by depositing the same in the United States mail addressed to the party to be notified, postage prepaid for first class registered or certified mail, or by delivering the same to an overnight delivery or courier service with delivery charges prepaid, or by facsimile transmission with fax stamp confirmation of delivery, addressed and transmitted to:

### 12.2 Notice to Purchaser.

Notices to Purchaser shall be delivered to each of the following, using separate mailings or deliveries:

Nupla Acquisition Corporation  
Attn: Chris L. Britt and Robert J. Perret Jr.  
180 Newport Center Drive, Suite 200  
Newport Beach, CA 92660  
Fax No. 949-720-8077

James Hagan, Esq.  
350 Cambridge Avenue, Suite 150  
Palo Alto, CA 9306  
Fax No. 650-322-8499

### 12.3 Notice to Seller.

Notices to Seller shall be delivered to each of the following, using separate mailings or deliveries:

Phyllis S. Carmien  
[REDACTED]  
[REDACTED]  
(during October through June)

Phyllis S. Carmien  
[REDACTED]  
[REDACTED]  
(during July through September)

Wells Fargo Bank  
Private Client Service  
Closely-Held Business Group  
420 Montgomery Street, 3rd Floor  
San Francisco, California 94104  
Attn: Cindy Ciolino

Wilbur Gin, Esq.  
Edwards, Ashton & Gin, LLP  
100 W. Broadway, Suite 860  
Glendale, CA 91210-1202  
Tel: 818-247-7380  
Fax: 818-247-7025

## **ARTICLE XIII LEGAL MATTERS**

### **13.1 Governing Law and Construction, Cumulative Remedies**

This Agreement shall be governed by and construed in accordance with the laws of the State of California as a contract made and to be performed wholly within said State. This Agreement has been negotiated by and among the parties and their respective legal counsel, and legal or equitable principles that might require the construction of this Agreement or any provision hereof against the party drafting this Agreement shall not apply in any construction or interpretation of this Agreement. If any lawsuit, litigation, or action at law or in equity is ever brought by any party to interpret this Agreement, this Agreement shall be interpreted fairly and according to the intentions of the parties as of the Effective Date hereof. For any breach or default of any of the provisions of this Agreement, the parties shall have any and all rights or remedies provided by this Agreement or provided by law or in equity, and no right, remedy, or election shall be exclusive, but shall be cumulative with all other available rights, remedies, and elections

### **13.2 Attorneys Fees.**

If any lawsuit, litigation, or action at law or in equity is ever brought by any party hereto to interpret or enforce any of the provisions of this Agreement, then the prevailing party therein shall be entitled to recover in addition to all other relief reasonable attorneys fees which may be fixed by the court or other trier of fact in the same action or in a separate action brought for that purpose.

### **13.3 Severability and Reformation.**

In the event that any provision of this Agreement shall ever be held to be invalid, illegal or unenforceable by a final order of a court of competent jurisdiction, said provision shall be stricken from this Agreement and this Agreement shall be modified or reformed in such manner as to be valid, legal, and enforceable in a manner so as to most nearly retain the original intentions of the parties.

## **ARTICLE XIV TERMINATION OF AGREEMENT**

### **14.1 Right to Terminate.**

This Agreement may be terminated and the Trust Transaction abandoned at any time prior to the Closing: (a) by the mutual written consent of all the parties hereto; (b) by either party alone, if such party is not in material breach of any representation, warranty, covenant or agreement contained in this Agreement, and if the other party is in material breach of a representation, warranty, covenant or agreement contained in this Agreement and such breaching party fails to cure such material breach within fifteen days after written notice of such material breach from the

non-breaching party; (c) by Purchaser acting alone if (i) any action or proceeding arising out of, relating to or in connection with the Business or the Shareholder Assets is pending or threatened by or before any Governmental Entity which (A) challenges or seeks to make illegal or to delay or otherwise directly or indirectly to restrain or prohibit the Closing or obtain material damages in connection with the Trust Transaction, or (B) seeks to prohibit Purchaser's ownership or operation of all or a material portion of the Business or Shareholder Assets, or (C) seeks any material diminution in the benefits expected to be derived by Purchaser as a result of the Trust Transaction, or (ii) any action is taken, or any statute, rule, regulation or order is proposed, enacted, enforced, promulgated, issued or becomes applicable to the Trust Transaction which could result in any of the consequences referred to in subclauses (A) through (C) of clause (i) above, (d) by either party alone if there is a final order of a court of competent jurisdiction which prevents the consummation of the Trust Transaction, (e) by the Purchaser if the court described in Exhibit D fails or refuses by 4:00 P. M. on December 13, 2002, to enter an order approving this Agreement and the consummation of the transaction described herein, or (f) by either party if this Agreement and the transaction described herein have not been consummated by 5:00 P. M. on December 31, 2002, PROVIDED, HOWEVER, a party that wishes to terminate this Agreement pursuant to this clause (f) (the "Terminating Party") may do so only after fulfilling the conditions precedent that (i) the Terminating Party must be actually ready, willing, and able to consummate this Agreement, (ii) the Terminating Party must give to the other party seven days advance written notice that the Terminating Party is ready, willing, and able to consummate this Agreement and intends to terminate this Agreement under this clause (f) if the other party does not consummate this Agreement by 5:00 P. M. on a specific date that is seven days or more in the future from the date of said written notice, and (iii) the party to whom said notice is delivered fails or refuses to consummate this Agreement and the transaction described herein on or before the date specified in said notice.

#### **14.2 Termination Procedures.**

If either party wishes to terminate this Agreement pursuant to the preceding Section 14.1, such party shall deliver to the other party a written notice stating that such party wishes to or is terminating this Agreement and setting forth a brief description of the basis of such termination. Termination of this Agreement will be effective as set forth in Section 10.1 above.

#### **14.3 Effect of Termination.**

Following any termination of this Agreement, the parties to this Agreement shall continue to be liable for any breach or breaches of this Agreement prior to such termination. Otherwise, upon any termination, this Agreement will become void will be of no force or effect and, except as set forth in the preceding sentence, no party will have any liability or obligation under this Agreement.

## ARTICLE XV GENERAL PROVISIONS

### **15.1 Entire Agreement; Amendments, No Third Party Beneficiaries**

This Agreement and the Exhibits and Schedules and the Ancillary Documents and the Nupla APA constitute the entire agreement and understanding by, between, and among the parties with respect to the subject matter hereof and supersede any prior agreement, understanding, or discussions relating to the Trust Transaction. This Agreement and the Exhibits and Schedules may be modified or amended only by a written instrument executed by all of the parties hereto. This Agreement is not intended to and does not confer upon any third party any rights, benefits, or remedies of any kind or nature.

### **15.2 No Waiver.**

There shall be no waiver of any provision hereof or of any breach or default in the performance of this Agreement except by a document in writing signed by the party to be charged with such waiver. No delay of, or omission in the exercise of any right, power, or remedy accruing to any party as a result of any breach or default by any other party under this Agreement shall impair any such right, power, or remedy, nor shall it be construed as a waiver of or acquiescence in any such breach or default, or of any subsequent breach or default; nor shall any waiver of any single breach or default be deemed to be a waiver of any other breach or default occurring before or after that waiver.

### **15.3 Successors and Assigns.**

The Seller may not assign any of its rights or obligations hereunder without the prior written consent of Purchaser. Purchaser may not assign any of its rights or obligations hereunder without the prior written consent of Shareholder, except that Purchaser may assign its rights and obligations hereunder without the prior written consent of the Shareholder to a designee of Purchaser which agrees to assume all of Purchaser's obligations under this Agreement. Any purported assignment in violation of this section shall be void. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

### **15.4 Expenses.**

Whether or not his Agreement is ever consummated, (a) Purchaser shall pay all the fees, costs, expenses, and disbursements incurred by Purchaser in connection with this Agreement, and (b) the Seller shall pay the all the fees, costs, expenses, and disbursements incurred by Seller in connection with this Agreement.

### **15.5 Counterparts.**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same agreement.

**15.6 Captions, Exhibits, and Schedules.**

The headings of this Agreement are inserted for convenience only and shall not constitute a substantive part of this Agreement. The Exhibits and the Schedules are integral and substantive parts of this agreement.

**15.7 Time.**

Time is of the essence with respect to the performance of all provisions of this Agreement.

**SIGNATURES ARE ON NEXT PAGE**

SIGNATURES

IN WITNESS OF THE FOREGOING, the parties hereto have executed this Agreement on the dates set forth below.

Dated: Nov. 12, 2002

PURCHASER NUPLA ACQUISITION CORPORATION

By 

as President

By 

as Secretary

Dated: \_\_\_\_\_

SELLER CARMEN FAMILY 1991 TRUST

WELLS FARGO BANK NA, as Trustee

By \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
PHYLLIS S. CARMEN, as Trustee

Dated: \_\_\_\_\_

NUPLA CORPORATION

By \_\_\_\_\_

as President

By \_\_\_\_\_

as Secretary

SIGNATURES

IN WITNESS OF THE FOREGOING, the parties hereto have executed this Agreement on the dates set forth below.

Dated: \_\_\_\_\_

PURCHASER NUPLA ACQUISITION CORPORATION

By \_\_\_\_\_  
as President

By \_\_\_\_\_  
as Secretary

Dated: 11/12/02

SELLER CARMEN FAMILY 1991 TRUST

WELLS FARGO BANK NA, as Trustee

By *Henry L. Nickerson*  
Title: VICE PRESIDENT

*Phyllis S. Carmien*  
PHYLLIS S. CARMEN, as Trustee

Dated: 11/12/02

NUPLA CORPORATION

By *Phyllis S. Carmien*  
as President

By *Rhonda Gadh*  
as Secretary

**EXHIBITS**





Linda S. Adams  
Secretary for  
Environmental Protection

## State Water Resources Control Board

### Division of Water Quality

1001 I Street • Sacramento, California 95814 • (916) 341-5455  
Mailing Address: P.O. Box 100 • Sacramento, California • 95812-0100  
FAX (916) 341-5463 • <http://www.waterboards.ca.gov>



Arnold Schwarzenegger  
Governor

## **NOTICE OF REVISED BOARD ADOPTION HEARING**

### **PROPOSED WATER RECYCLING POLICY**

**NOTICE IS HEREBY GIVEN** that the State Water Resources Control Board (State Water Board) has rescheduled its hearing to consider adoption of a proposed Water Recycling Policy and a proposed Certified Regulatory Program Environmental Analysis. This hearing was originally scheduled for December 4, 2007, and will now be scheduled for January 15, 2008. A quorum of State Water Board members will be present at the hearing. The State Water Board will receive oral comments on the proposed Water Recycling Policy and may adopt the proposed Water Recycling Policy at the January 15, 2008 hearing. The location and time of the hearing are provided below.

January 15, 2008 – 10 a.m.  
Cal/EPA Headquarters Building  
Byron Sher Auditorium  
1001 I Street  
Sacramento, CA 95814

### **BACKGROUND**

Recycled water is a major source of water supply in California and a major component in California's plan for meeting the state's growing water demand. The California Water Plan estimates that recycled water usage can increase from half a million acre-feet per year in 2003 to two million acre-feet per year in 2030. The Recycled Water Task Force issued a report in June 2003 that contained recommendations that California should implement to achieve this goal. Some of the recommendations concerned the need to consistently apply state statutes and regulations regarding water recycling and water quality. The purpose of a statewide policy would be to provide direction to the Regional Water Quality Control Boards (Regional Water Boards) on how to interpret state statutes, regulations, plans, and policies with respect to water recycling projects, thus ensuring consistent interpretation of the requirements among the Regional Water Boards.

On October 2, 2007, the State Water Board held a workshop on the proposed Water Recycling Policy and an associated Certified Regulatory Program Environmental Analysis. The proposed Water Recycling Policy presented at the workshop and the comments received on it can be viewed at: [http://www.waterboards.ca.gov/water\\_recycling\\_policy/index.html](http://www.waterboards.ca.gov/water_recycling_policy/index.html). The comment deadline was October 26, 2007.

*California Environmental Protection Agency*

**DOCUMENT AVAILABILITY**

State Water Board staff is currently preparing a response to the comments that have been received on the draft of the proposed Water Recycling Policy that was presented at the October 2, 2007 workshop. Any revisions to the proposed Water Recycling Policy and Certified Regulatory Program Environmental Analysis will be posted at a later date, at: [http://www.waterboards.ca.gov/water\\_recycling\\_policy/index.html](http://www.waterboards.ca.gov/water_recycling_policy/index.html). If revisions are made to these documents, Notice of Opportunity for Comment will be provided at a later date.

Interested parties may subscribe to an email list for future notifications about the proposed Water Recycling Policy at: [http://www.waterboards.ca.gov/lyrisforms/swrcb\\_subscribe.html](http://www.waterboards.ca.gov/lyrisforms/swrcb_subscribe.html) : choose Water Recycling Policy.

**ORAL COMMENTS**

Time limitations on oral presentations may be imposed. Please coordinate oral presentations with others with similar comments. For other presentation recommendations, see "Presentations to the Board" at: [http://www.waterboards.ca.gov/wksmtgs/board\\_presentations.html](http://www.waterboards.ca.gov/wksmtgs/board_presentations.html).

**PARKING AND ACCESSIBILITY**

All visitors are required to sign in and receive a badge prior to attending any meeting in the building. The Visitor and Environmental Services Center is located just inside and to the left of the Cal/EPA Building's public entrance. Valid picture identification may be required due to the security level. Please allow up to 15 minutes for receiving clearance.

Individuals who require special accommodations are requested to contact (916) 341-5600 at least five working days prior to the meeting date.

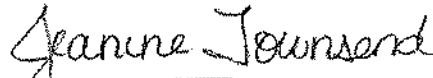
Persons with hearing or speech impairments can contact us by using the California Relay Service TDD. TDD (Telecommunications Device for the Deaf) is reachable only from phones equipped with a TDD Device. HEARING IMPAIRED RELAY SERVICE: TDD to voice 1-800-735-2929, Voice to TDD 1-800-735-2922.

**ADDITIONAL INFORMATION**

Please direct questions about this notice to Gordon Innes at (916) 341-5517 ([ginnes@waterboards.ca.gov](mailto:ginnes@waterboards.ca.gov)).

November 16, 2007

Date



Jeanine Townsend  
Acting Clerk to the Board